

Memorandum



Date: March 18, 2014
To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

Supplement
Agenda Item No. 8(F)(1)

From: Carlos A. Gimenez
Mayor

Subject: Supplement to Contract Award Recommendation for Contract No. RFP864,
Security Guard Services for Miami-Dade Transit

This supplement is presented to report that two bid protests were filed with the Clerk of the Board on December 2, 2013 by 50 State Security Service, Inc. (50 State), and G4S Secure Solutions (USA), Inc. (G4S). In accordance with the bid protest procedures, as set forth in Section 2-8.4 of the Code of Miami-Dade County and Implementing Order 3-21, a Hearing Examiner was appointed and a hearing was conducted on December 16, 2013. The Hearing Examiner upheld the Mayor's contract award recommendation.

Background

The solicitation was advertised on May 8, 2013. Fourteen proposals were received in response to the solicitation. Following evaluations of proposals by the Evaluation/Selection Committee (Committee), three firms (AlliedBarton, G4S, and 50 State) were recommended for oral presentations. Upon completion of the oral presentation, the Committee re-evaluated, re-rated, and re-ranked the proposals, based upon the written documents combined with the oral presentations. The Committee recommended the two highest ranked firms, AlliedBarton and G4S, for negotiations. Subsequently, the Negotiations Team (Team) met individually with each firm, and requested that the firms submit their best and final offer (BAFO). The Team met on October 1 and 24, 2013, to evaluate the BAFOs submitted by the firms. At the October 24, 2013 meeting, price was reviewed for the initial four-year term; AlliedBarton's BAFO price was \$31,810 lower than G4S's BAFO price. Since AlliedBarton was ranked the highest by the Committee, in both technical and price, and their BAFO was lower over the initial term of the contract, the Team unanimously voted that AlliedBarton should be recommended for award.

50 State and G4S protested the award recommendation of this contract to AlliedBarton. 50 State's legal argument was that the Evaluation Committee's scoring lacked the necessary rational basis and was arbitrary and capricious. Additionally, 50 State argued that the entire process was tainted by allegedly disparaging comments made by Evaluation/Selection Committee members. G4S's legal argument was that the decision to award the contract to AlliedBarton was a) arbitrary and capricious; b) erroneous and made in violation of applicable laws and procedures; c) made in violation of County Resolution R-204-10, the County's Settlement Agreement with G4S and the County Ethics Ordinance; and d) inconsistent with the proposals, the BAFO, and the solicitation. In addition, G4S expressed concerns that a representative from the Office of the Inspector General inserted themselves in the evaluation process.

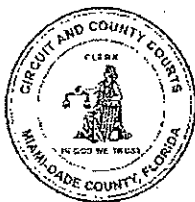
The Hearing Examiner, Judge Loree S. Feiler, concluded that the award recommendation was appropriate and should be upheld. There was no evidence that the County acted illegally, arbitrarily, or capricious. For these reasons, the bid protests filed by 50 State and G4S were denied. The award to AlliedBarton the highest ranked proposer was upheld.

Copies of the 50 State and G4S protest, Motion to Intervene from AlliedBarton, the County Attorney's filing, and the Hearing Examiner's Report are attached.

Attachment

A handwritten signature in black ink, appearing to read "Alina T. Hudak".
Alina T. Hudak
Deputy Mayor

Harvey Ruvin
CLERK OF THE CIRCUIT AND COUNTY COURTS
Miami-Dade County, Florida



CLERK OF THE BOARD OF COUNTY COMMISSIONERS
STEPHEN P. CLARK CENTER
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111 N.W. 1st Street
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December 24, 2013

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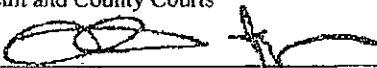
Re: Bid Protest – RFP No. 864
Security Guard Services for Miami-Dade Transit
(Protesters: G4S Secure Solutions USA, Inc. & 50 State Security Service, Inc.)

Dear Messrs. Dotson and Goldstein:

Pursuant to Section 2-8.4 of the Code and Implementing Order 3-21, forwarded for your information is a copy of the Findings and Recommendation filed by the Honorable Judge Loree S. Feiler, Hearing Examiner, in connection with the foregoing bid protest hearing which took place on December 16, 2013.

Should you have any questions regarding this matter, please do not hesitate to contact this office.

Sincerely,
HARVEY RUVIN, Clerk
Circuit and County Courts

By 

Christopher Agrippa, Director
Clerk of the Board Division

CA/fed
Attachment

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Albert E. Dotson, Jr., Esq.
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Joseph M. Goldstein, Esq.
Shutts & Bowen, LP

Page Two
December 24, 2013

cc: Honorable Chairwoman Rebeca Sosa and
Members, Miami-Dade County Board of County Commissioners (via email)
Honorable Carlos A. Gimenez, Mayor, Miami-Dade County (via email)
Alina T. Hudak, Deputy Mayor/County Manager (via email)
R.A. Cuevas, County Attorney (via email)
Hugo Benitez, Assistant County Attorney (via email)
Bruce Libhaber, Assistant County Attorney (via email)
Jenelle Snyder, County Attorney's Office (via email)
Rita Gonzalez, County Attorney's Office (via email)
Elizabeth Alfonso Ruiz, County Attorney's Office (via email)
Charles Anderson, Commission Auditor (via email)
Elizabeth Owens, BCC Legislative Analyst, Commission Auditor's Office (via email)
Lester Sola, Director, Internal Services Department (via email)
Ysela Lloret, Director, Miami-Dade Transit (via email)
Miriam Singer, Assistant Director, Procurement Management, ISD (via email)
Ray Baker, Assistant to the Director, ISD (via email)
Walter Fogarty, Manager, Procurement Vendor Services, ISD (via email)
Amos Roundtree, Director, Purchase Division, ISD (via email)
Lydia Osborne, Procurement Contracting Officer, ISD (via email)
Horace Graham, MDT Security Manager, Office of Safety & Security, MDT (via email)
Eric Muntan, Chief, Office of Safety & Security, MDT (via email)
50 State Security Service, Inc.
Allied Barton Security Services, LLC
Feick Security Corporation
G4S Secure Solutions, USA, Inc.
Kent Security Services, Inc.
McRoberts Protective Agency, Inc.
Navarro Group Ltd., Inc.
P.G. Security, Inc., d/b/a Platinum Group Security, Inc.
Security Alliance, LLC
American Guard Services, Inc.
US Alliance Management Corp., d/b/a U.S. Security
Melsha Security Service, Inc.
Quest Security
Unlimited Security

**CLERK OF THE
BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

CLERK OF THE BOARD

2013 DEC 24 AM 7:32

CLERK, BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLA.
#1

In re: Bid Protest—Request For Proposal No. 864
Security Guard Services for Miami-Dade Transit ("MDT")
Protest of G4S Secure Solutions USA, Inc., and
50 State Security Service, Inc.

FINDINGS AND RECOMMENDATIONS OF HEARING EXAMINER

Pursuant to Section 2-8.4 Miami-Dade County Code and Administrative Order 3-21

This matter was heard before the undersigned Hearing Examiner on December 16, 2013 at 9:30 A.M. in the Stephen P. Clark Center, 111 N.W. 1st Street, Room 18-1, Miami, Florida, upon the bid protests filed by G4S Secure Solutions USA, Inc. ("G4S"), and 50 State Security Service, Inc. ("50 State"), (collectively, the "Protesters") of the Miami-Dade County ("County") Mayor's recommendation of award to AlliedBarton Security Services LLC ("AlliedBarton") in response to Request for Proposal Number 864, Security Guard Services for MDT (the "RFP"). AlliedBarton is an intervener in this bid protest.

Having considered the written protests, the County's memorandum in opposition to the bid protests, the exhibits, arguments by the parties, testimony of witnesses, and all documentation and recordings of meetings introduced at the bid protest hearing, and being otherwise fully advised, I find as to both bid protestors that the County award recommendation was not arbitrary or capricious, but rather based upon a reasonable judgment and an honest exercise of discretion. Additionally, as to G4S I find that the County and its agents did not engage in any behavior or make any statements that

either improperly influenced the evaluation or selection process or violated the terms of any settlement agreement reached with any party to this bid protest. The protesters failed to show any evidence that the County acted fraudulently, illegally or dishonestly. Accordingly, I recommend denying both bid protests and affirming the County Mayor's recommendation to award AlliedBarton the contract for Security Guard Services for MDT.

FINDINGS OF FACT

1. The County issued the subject RFP, Request for Proposal No. 864 Security Guard Services for MDT (Exhibit A). The purpose of the RFP was to solicit "proposals from qualified firms to provide armed security guard services, in a manner that ensures the highest level of security throughout MDT's maintenance facilities, Metrorail and Metromover stations, bus yards, passenger-park and ride lots, and major bus depots" and "to award a contract for armed security guard services, enhanced with technology" at the listed locations and any additional County facilities. RFP at ¶¶ 2.1-2.2.

2. Pursuant to the RFP, the County outlined a procedure for consideration of contracts and subsequent award which stated, in pertinent part:

The County may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint.

The Evaluation/Selection Committee will evaluate, score, and rank proposals, and submit the results of their evaluation to the County Mayor or designee with their recommendation. The County Mayor or designee will determine with which Proposer(s) the County shall negotiate, if any, taking into consideration the Local Preference Section above. *In his sole discretion, the County Mayor or designee may direct negotiations*

with the highest ranked Proposer, negotiations with multiple Proposers, or may request best and final offers.

[...]

Id. at ¶ 4.8 (emphasis added)(Negotiations).

3. Pursuant to the terms of the RFP, the award was to be made on a best-value basis, price and other factors considered. The RFP required that the proposals be scored based on six technical criteria and on price, which would be evaluated subjectively in combination with the technical proposal. Two-thirds of the total available points were to be awarded under the technical criteria, and one-third under the price criterion. The award, if any, shall be made to the Proposer whose proposal shall be deemed to be in the best interest of the County.

4. 50 State is the incumbent contractor for the services sought in the RFP.

5. The Evaluation/Selection Committee met on July 24 and 26, 2013, to evaluate, score, and rank the nine responsive proposals received.¹

6. Based on that evaluation, the proposals were scored and ranked, and at the July 26 meeting, a motion was made, seconded, and unanimously approved to recommend inviting the three top-ranking proposers (AlliedBarton, G4S and 50 State) to return for oral presentations. These three remaining firms were informed that they

¹ Initially, the County received fourteen proposals for this RFP. Three of the fourteen proposals were deemed non-responsive by the County Attorney's Office for failure to submit required bid bonds or other materials. Two additional firms failed to submit required Small Business Enterprise Program goal affidavits. These five firms were not evaluated. None of the parties challenge the findings of non-responsiveness. The Evaluation/Selection Committee evaluated and considered the remaining nine proposals.

would be re-scored pursuant to the RFP taking into account their oral presentations as well as their written proposals.

7. AlliedBarton, G4S and 50 State returned to the Evaluation/Selection Committee on August 6, 2013 for oral presentations and all were afforded approximately 15 minutes to make such presentations. In addition to the presentations, each proposer answered questions and responded to inquiries from committee members. These inquiries were provided in advance to each of the three proposers.

8. Contrary to G4S's assertion, there is no evidence on the record that AlliedBarton in any way misled the committee members at oral presentation regarding either the proposed project manager or the company's turnover rate.

9. G4S's contention that AlliedBarton identified an individual from Charlotte as the proposed project manager is erroneous. During AlliedBarton's oral presentation, Ruben Galindo is clearly introduced as the proposed project manager. See Recording of AlliedBarton Oral Presentation at 7:00-7:29. There is no evidence that the gentleman from Charlotte was ever introduced as project manager and there is no discussion on the record that there was any confusion from any of the Evaluation Committee members regarding this fact. The person from Charlotte was clearly introduced as the company's training director and simply made part of the presentation.

10. There is no evidence that AlliedBarton provided any misleading or contradictory information regarding the company's turnover rates. In the written proposal, submitted in June 2013, AlliedBarton stated that its "turnover rate for [its] Dade District is 38% including both voluntary and involuntary turnover." AlliedBarton

Proposal at p. 108. At the August 6, 2013 oral presentation, AlliedBarton stated that its turnover rate for the "region" is 42%, and noted that its turnover rate for the wage scale specified in its proposal was 28%. See Recording of AlliedBarton August 6, 2013 Oral Presentation at 24:47 to 25:17.

11. There is no evidence to contradict the accuracy or validity of either the 38% turnover rate represented by AlliedBarton in the written proposal submitted in June 2013, or the turnover rates AlliedBarton provided during its oral presentation approximately two months later. There was no evidence submitted or testimony given that AlliedBarton presented any misleading or inaccurate statements. AlliedBarton's May 2013 and August 2013 representations concerning turnover rates may be accurate at the time they are made and, without evidence to the contrary, the Hearing Examiner cannot find otherwise.²

12. After the presentations and questions and answers, the Evaluation/Selection Committee deliberated and each member re-scored the proposers separately. The total score after the oral presentations resulted in AlliedBarton in first place (technical score: 3,890/ 4,200; price score: 1,980/2,100; total score: 5,870/ 6,300), G4S in a close second place (technical score: 3,815; price score: 1,945; total score: 5,760) and 50 State a relatively distant third place (technical score: 3,433; price score: 1,760; total score: 5,193).

² Although the fact that no evidence was presented to contradict or question AlliedBarton's turnover rate is dispositive of the factual issue, it is a matter of record that the committee, in its post oral presentation deliberations, did not discuss AlliedBarton's turnover rate.

13. Based on this scoring, the committee, pursuant to the instructions in the RFP, made a recommendation to the Mayor or his designee (based on a motion, second, and unanimous vote) that the top two proposers (AlliedBarton and G4S) be invited back for negotiations and Best and Final Offers (BAFOs). The motion referenced the scoring and stated that these two firms would be invited to proceed to negotiations based on the clear superiority of the proposals, the oral presentations and the corresponding high prospect for outstanding performance on the resulting contract.

14. The Mayor's designee (Miami-Dade Internal Services Department Director Lester Sola) signed a memorandum on September 16, 2013 in which he concurred with the recommendation to proceed to another round with AlliedBarton and G4S. The memorandum directed a Negotiations Committee to convene in order to provide a recommendation based on such negotiations and solicitations of BAFOs. See Memorandum from Lydia Osborne, Chairperson, Evaluation/Selection Committee to Lester Sola, Director, Internal Services Department Signed September 16, 2013.

15. The Negotiations Committee met individually with each proposer (AlliedBarton and G4S) on September 23-24, 2013, discussed the pricing of the contracts, and requested a BAFO on or before September 30, 2013. The BAFOs required the exact same technical proposal, the only difference being the best and final price offering.

16. The Negotiations Committee reconvened on October 1 and 24, 2013 to review the BAFOs submitted. At the October 24 meeting, the BAFOs were reviewed

and the Negotiations Committee evaluated the total contract price for the 4 year initial contract term.³

17. During the October 24 meeting, the representative of the Miami-Dade County Office of the Inspector General, Peter Liu ("OIG Representative"), made two statements at issue. The first statement was a general statement about due diligence that did not reference any company or proposer.

18. The OIG Representative's second statement, made later in the meeting, questioned whether there were any outstanding issues related to the G4S proposal:

I have another question. Again, is that the actual—you know, the physical question is probably the question – the answer that you're going to have to repeat to the Mayor (inaudible) in public, though.

The thing is that this is a conversation about (inaudible) had about prior experience as G4S, you know, both of them. Both of them. Because in a prior legal situation, they were known as Wackenhut. The question is, do we have any outstanding issues with Wackenhut (inaudible) for the negotiations to the County's satisfaction with Wackenhut? And why did Wackenhut -- why was the Wackenhut contract terminated? (Inaudible).

And, you know, was it resolved satisfactorily in order to give them a key [note-the transcript says "key," but it appears to be "clean" upon review of the audio tape] background? You know, we could also probably (inaudible).

³ At the October 1, 2013 meeting, the Negotiations Committee reviewed information on the first-year costs under the BAFOs offered by AlliedBarton and G4S. Based on that information, a motion was made to recommend G4S. Subsequent to this meeting, once the chairperson discovered the fact that the committee members may not have been aware of the full four-year cost of the contract in their deliberations and in making their determinations, she caused the committee to be reconvened on October 24 with the full cost comparisons over the four-year contract term to be provided at that meeting. None of the parties contested the decision to reconvene the committee for the October 24 meeting, nor could that decision be reasonably contested based upon the facts presented to me. Moreover, I find that reconvening the committee to provide the accurate information of the four year costs of this contract was prudent and well within the County's discretion.

Negotiations Committee October 24 meeting transcript at 53. While the statement can be considered to be highly inappropriate and even improper, I must find that the statement in and of itself neither references a settlement agreement with Wackenhut nor with any predecessor entity to G4S. The statement does not refer to terms of any settlement agreement or constitute an assertion that G4S or any related entity engaged in any improper conduct. The statement does not instruct the committee members to consider any specific allegations or facts. It is simply a question posed by a non-voting observer (the OIG Representative) that has the unrefuted statutory right to address the committee.⁴

19. The settlement agreement with the Wackenhut Cooperation, entered into evidence by representatives for the successor entity, G4S, states in pertinent part that the County shall make no reference to the Settlement Agreement, the Audit, the Final Audit Report, or the claims and controversies relating to the Federal Case, the Liquidated Damages Case, the Public Records Case, the Debarment, or the Qui Tam Case. See Settlement Agreement at ¶8.

20. No representative from the County, including the OIG Representative, ever made reference to any of the terms or items covered by the Settlement Agreement. The first time the Settlement Agreement was referenced was in the Bid Protest of G4S.

21. In addition to the fact that no County representative referenced the Settlement Agreement, the Audit, the Final Audit Report, or the claims and controversies relating to the Federal Case, the Liquidated Damages Case, the Public

⁴ See Miami-Dade County Code at Section 2-1076(d)(11), introduced at the bid protest hearing. This Hearing Examiner took judicial notice of this code provision without objection.

Records Case, the Debarment, or the Qui Tam Case, there is no evidence that any of those items were considered or entered into the deliberations or discussions among the committee members.

22. Accordingly, there is no factual basis to conclude that the OIG Representative's statement had any influence, improper or otherwise, on the committee's discussions, deliberations or recommendations.⁵

23. Over the four year term, AlliedBarton, the highest ranked proposer, provided a BAFO of \$56,340,127, representing a savings of \$31,810 compared to G4S's BAFO of \$56,371,937.

24. On October 24, after discussion and review of the scoring of the proposers by the Evaluation/Selection Committee, Negotiations Committee Member and MDT Assistant Director Albert Hernandez, P.E., made a motion to recommend award to AlliedBarton. In making his motion, Mr. Hernandez discussed the fact that the majority of Evaluation/Selection Committee Members ranked AlliedBarton the best technical proposal, AlliedBarton scored the most points, and that AlliedBarton's BAFO price was lower than G4S' price. The motion was seconded and unanimously passed by the committee.⁶

⁵ Although not a factor in the Hearing Examiner's review of the record and the evidence, it is nonetheless a matter of record that the only testimony or evidence regarding the influence of the OIG Representative's statement is the unrefuted testimony from Lydia Osborne at the bid protest hearing that such statements did not have any bearing on the committee's deliberation or voting.

⁶ At the October 24 meeting, contrary to G4S's assertions in both its Bid Protest memorandum and at the hearing, "no consensus" to award to G4S is ever reached. The only motion, second, and vote results in a unanimous award recommendation for AlliedBarton. Additionally, there is no dispute that Albert Hernandez requested the scoring of the Evaluation/Selection Committee. The scoring was provided to the Negotiations Committee, and

25. Subsequent to the recommendation of the Negotiations Committee, the County Mayor issued his recommendation memorandum dated November 25, 2013 recommending award to AlliedBarton and concluding:

The Team [Negotiations Committee] referred back to the post-oral scores. These scores showed that five of the seven [Evaluation/Selection] Committee members scored AlliedBarton higher than G4S for the technical criteria. Additionally, four of the seven [Evaluation/Selection] Committee members scored Allied Barton higher than G4S for price. Since AlliedBarton was ranked the highest by the [Evaluation/Selection] Committee, in both technical and price, and their BAFO was lower over the initial term of the contract, the team unanimously voted that AlliedBarton should be recommended for award.

Mayor's November 25, 2013 Award Recommendation Memorandum at page 4.

26. Subsequent to this award recommendation, the subject Bid Protests were timely filed.

27. There is no record evidence or testimony at the bid protest that any conversations, discussions, or deliberations took place in violation of the Cone of Silence, public records, or Sunshine laws. The unrefuted testimony of Lydia Osborne at the bid protest in fact establishes, without objection or contrary evidence or testimony, that the County and committee members complied with all such laws (despite unsubstantiated insinuations in the bid protest to the contrary). In accordance with Miami-Dade County procurement procedures all meetings of the evaluation/selection and negotiation committees were tape recorded.

upon its review, Allied Barton scored higher than G4S overall in technical scores- higher on five of the seven score sheets (the other 2 having it a tie), earned more points for price during the subjective review, and offered the lowest price at BAFO.

CONCLUSIONS OF LAW

28. The Petitioners fail to meet the heavy burden that Florida law imposes to overturn a contract award recommendation, especially here where the recommended firm, AlliedBarton, was the highest ranked technical proposer as well as offered the lowest price in the last round of negotiations. G4S, the second-ranked proposer, attempts to overturn the award by suggesting an alleged impropriety that simply did not happen—specifically, that the process was anything other than open, honest, and in the sunshine. G4S also attempts to overturn hours of discussion and consensus with reference to statements from the OIG Representative, one concerning generally the due diligence procedure and one referencing G4S's predecessor company. The OIG Representative had the right to make the statements under the County Code, and neither statement was improper or prejudicial and neither statement violated any settlement agreement. Although that provides a sufficient basis to reject G4S's argument, it is further noted that there is no discussion of these statements by the Negotiations Committee and Lydia Osborne's unrefuted testimony is that these statements were not considered. The discussions and motion made and adopted by the committee references price and scoring without any mention of the statements or their contents. The evidence shows that the County acted in good faith, had a rational basis for the award and the process was conducted in accord with all laws governing public meetings.

29. 50 State, the third-ranked proposer, attempts to show the process was arbitrary or capricious based on reasonable discussions and statements placed on the record by the very selection committee members tasked with discussing the pros and

cons of the various companies. In short, without showing that the committee was arbitrary, capricious, or abused its discretion, 50 State's main ground for protest is that the evaluation committee used their judgment and discretion but failed to evaluate the proposers independently. Additionally, 50 State argues that the selection committee was arbitrary in not "short listing" 50 State as part of the final two proposers for consideration even though they offered the lowest price of the three proposers that made the oral presentations. This ignores the pricing provisions, best value analysis, and the clear language of the RFP as well as the consensus in scoring of the committee that evidenced a clear gap in scoring between the top two proposers and third-place proposer 50 State. 50 State argues that the County got it wrong and asks the hearing examiner to substitute her judgment for the judgment of County staff and administration. That is not enough. So long as the County acted in good faith, its decision should not be disturbed. Accordingly, and for the reasons more fully explored herein, both bid protests provide insufficient legal and factual grounds to reject the County Mayor's recommendation for award.

Legal Standard

30. Neither hearing examiners nor judges may overturn or second guess the judgment of government employees or elected officials as to the merits or wisdom of a procurement decision. See *Miami-Dade County v. Church and Tower, Inc.*, 715 So. 2d 1084, 1089 (Fla. 3d DCA 1998) ("So long as such a public agency acts in good faith, even though they may reach a conclusion on facts upon which reasonable men may

differ, the courts will not generally interfere with their judgment, even though the decision reached may appear to some persons to be erroneous.").

31. To the contrary, a recommendation may only be overturned if arbitrary, capricious, or the product of dishonesty, fraud, illegality, oppression, or misconduct. See *Liberty County v. Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982). Accordingly, the core tenet of bid protest hearings provides that "the hearing officer's sole responsibility [in reviewing a protest] is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly." *Dep't of Transp. v. Groves-Watkins Constructors*, 530 So. 2d 912, 914 (Fla. 1988). The County's action may be considered arbitrary if it is not supported by facts or logic. See *Agrico Chemical Co. v. Dep't of Environmental Regulation*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978). The County's action may be considered capricious if it is taken without thought or reason or with irrationality. *Id.*; see also *Church & Tower, Inc.*, 715 So. 2d at 1089-90 (finding that while bid protest showed substantial disagreement with the action of the commission and the hearing examiner, it fell short of showing "arbitrary or capricious action"); *Marriott Corp. v. Metro Dade County*, 383 So. 2d 662 (Fla. 3d DCA 1980) (holding that County procurement decision need only be reasonably based on facts tending to support the County's conclusion).

32. A protester cannot prevail merely by showing that it is possible to construct an argument whereby the committee could have scored the proposals differently or could have established a different cut off point for price negotiations. The County has wide discretion in the procurement process, and "an honest exercise of this discretion will not be overturned by a court even if it may appear erroneous or if

reasonable people may disagree." *Baxter's Asphalt & Concrete, Inc.*, 421 So. 2d 505 at 507. In the context of an RFP, the County has maximum discretion and flexibility because the County may subjectively consider factors other than merely price in evaluating and recommending a contract. See *System Develop. Corp. v. Dep't of Health & Rehabilitative Servs.*, 423 So. 2d 433, 444 (Fla. 1st DCA 1982) (contrasting "rigid" bid process with more fluid RFP process); see also Miami-Dade County Administrative Order 3-38.

33. The facts demonstrate more than a rational basis for both the decision to invite the top three proposers for oral presentations (which included 50 State) and the subsequent decision to invite only the top two highest-scoring proposers for negotiations and BAFOs.⁷ Accordingly, 50 State's argument fails as a matter of law because it can provide no evidence to show that the County was arbitrary or capricious in not scoring its price proposal higher and not recommending it for final round of negotiations and subsequent BAFOs.

34. It is not the role of the hearing examiner to undertake a subjective re-scoring of the proposers. See *Scientific Games, Inc. v. Dittler Bros., Inc.*, 586 So. 2d 1128, 1131 (Fla. 1st DCA 1991) ("The reviewing court need not second guess the members of the evaluation committee to determine whether reasonable persons might reach a contrary result.").

⁷ It is noteworthy that 50 State does not challenge the short listing process which eliminated six responsive proposals from further consideration and allowed 50 State to be included in the top three firms invited to oral presentations based on the top three scores. The selective application of the "arbitrary and capricious" label seems only to apply when 50 State is left out of the final negotiations based on its relatively distant third place finish.

35. The RFP provides a framework for how the scoring is to be allocated among the various technical and performance based metrics. See RFP at § 4.2 (Evaluation Criteria). The Evaluation/Selection Committee reviewed all responsive proposals under the criteria as outlined and each member provided their individual scores. These scores were totaled and the resulting total points awarded for each proposal provided the basis for the committee's recommendation. Specifically, the top three were recommended for oral presentations. After such presentations, the three proposers were re-scored consistent with the RFP. The re-scoring revealed two competitive and superior proposals very close in score (AlliedBarton and G4S). However, the third-ranked proposer, 50 State, was quantitatively in a different class from the top two proposers. See Memorandum from Lydia Osborne, Chairperson, Evaluation/Selection Committee to Lester Sola, Director, Internal Services Department signed September 16, 2013 at page 2-4.

36. 50 State's argument that the statements of two committee members were prejudicial or capricious similarly fails as a matter of law. 50 State attempts to use comments on the record to confuse a proper process and a rational award. The record establishes that 50 State was one of the top three highest ranked proposers and made the oral presentation stage before the Evaluation/Selection Committee. 50 State relies on the untenable proposition that the committee was prejudiced simply because the committee members expressed their honest opinions in evaluation of the company and its proposal. No evidence was presented that either of these individuals acted with bias or that any of the decisions made by the evaluation/selection committee were arbitrary or capricious. Therefore, as I cannot substitute my judgment for those of the

evaluation committee where reasonable people may reach different conclusions, the recommendation made by the evaluation/selection committee and the County Mayor should not be disturbed.

The Committees' Price Scoring, Best Value Analysis And Ultimate Award Recommendation Are Rational And Based On Clearly Established Procedure

37. There is no evidence to support a conclusion that the price scoring and determination of each proposal's respective best value was anything other than rational and therefore those claims fail as a matter of law. An RFP, as opposed to a straight bid, is an invitation for an interested firm to design, price, and submit a proposal within the outlined specifications. Therefore, unlike a straight bid, it would be impossible to evaluate price without including a subjective component which measures the price in relation to the value of the proposed services. In this vein, the RFP specifically outlines that:

After the evaluation of the technical proposal, in light of the oral presentation(s) if necessary, the County will evaluate the price proposals, of those Proposers remaining in consideration. ***The price proposal will be evaluated subjectively in combination with the technical proposal, including an evaluation of how well it matches Proposer's understanding of the County's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed services.*** The pricing evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The County reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the County.⁸

RFP at § 4.6 (Emphasis added)(Price Evaluation).

⁸ To the extent 50 State contends that its lower raw price entitled it to a higher price score, its contention must also be rejected as an untimely challenge to the RFP specifications which clearly provided that price proposals would be "evaluated subjectively."

38. In another attempt to cast the County's well-supported decision as arbitrary or capricious, both Petitioners dispute the County's determination of "best value." Both Petitioners misinterpret both the concept of best value as well as the legal standard under which the determination of best value is reviewed. In both cases, Petitioners' arguments fail to meet the requisite standard as any rational decision shall not be disturbed. See *Church & Tower, Inc.*, 715 So. 2d at 1089-90 (Fla. 3d DCA 1998). There is no basis to overturn the Evaluation/Selection Committee's determination and scoring of price or the Negotiations Committee's ultimate recommendation to award consistent with the RFP.⁹

There is No Basis to Question the Veracity of AlliedBarton's Representations Regarding Turnover Rate and Project Management

39. G4S asserts that AlliedBarton misrepresented its turnover rate during oral presentations and such alleged misrepresentation materially impacted the scoring and

⁹ 50 State argues in memorandum and at the bid protest that it should have made the negotiations round because it offered a lower price and excluding it was impermissible error. Raw price does not entitle a proposer to a better Price Score pursuant to the best value analysis undertaken pursuant to the RFP. Additionally, the plain language of the RFP allows the Mayor or designee to determine that the County will award after the selection committee evaluation, or proceed to negotiation with one or more proposers. See RFP at ¶ 4.8 (Negotiations). The recommendations of the Evaluation/Selection Committee that the top two proposers were significantly better and more capable and therefore should go to a negotiations round combined with their scores provides more than a rational basis for the Mayor or designee's decision to negotiate with the two top ranked proposers. Similarly, G4S has no basis based on an arbitrary and capricious standard to overturn the recommendation of award to AlliedBarton. Although the Negotiations Committee recommended G4S on October 1, the committee had incomplete information that suggested that G4S's BAFO was the lower priced BAFO. Once the Chairperson reviewed the tapes and the data, it was clear that the committee made the award based on a misunderstanding. Although G4S's price was lower in the first year, the BAFOS revealed that over the life of the contract, AlliedBarton actually offered the lower priced proposal. Therefore, the Committee was reconvened to review the full pricing data. The decision to award to AlliedBarton was not irrational or arbitrary in light of the lower price and higher scores.

selection process. First and foremost, there is no evidence on the record that AlliedBarton misrepresented its turnover rate. AlliedBarton's proposal listed a turnover rate of 38%. See AlliedBarton Proposal at 108. In oral presentations, months later, AlliedBarton represented a turnover rate of 28% for a wage scale similar to the proposed security service providers and a 42% turnover rate for employees at all wage scales in the regional area. See AlliedBarton Oral Presentation Recording at 24:47-25:17. Notwithstanding the fact that there is serious doubt as to whether this information formed a material basis of the committee's deliberations or scoring (there is no record evidence of any discussion of turnover rates of any company), there is simply no basis to determine that the data points were inconsistent and, therefore, no basis to conclude that its consideration would have been improper.¹⁰

*All Committee Deliberations Were Open, Recorded,
and Conducted in the Sunshine*

40. The Protesters neither presented any real argument nor introduced any evidence to suggest that the County or committee members engaged in any secret off-record, illegal, or impermissible discussion. At the October 24 Negotiations Committee meeting, there is a request to review the scoring of the proposers. Unlike G4S's

¹⁰ G4S also asserted at the bid protest hearing that the committee members were improperly influenced by AlliedBarton's representation of a project manager from Charlotte. The recording of AlliedBarton's oral presentation clearly contradicts this assertion. The designated project manager that is introduced, Mr. Galindo, is not from Charlotte; and the gentleman from Charlotte who is part of AlliedBarton's presentation and discusses training nationwide never makes any assertion that he will in any way manage this contract. See AlliedBarton Oral Presentation Recording at 7:05-7:29. G4S offers no evidence to the contrary, and therefore this argument cannot support a finding of improper consideration or capriciousness.

assertion, there is no "curious break" in the recording--the Committee Chairperson stated that the committee will adjourn for a bathroom break. This break took approximately ten minutes. The Committee Chairperson, Lydia Osborne, testified at the bid protest hearing that there were no such impermissible discussions and that during the break she gathered the score sheets from the Evaluation/Selection Committee members, and upon the meeting being resumed immediately communicated the scores to the committee members. Accordingly, as there has been no showing of improper influence, violation of the sunshine laws or open meeting laws, this argument cannot form a basis to overturn the award recommendation.

The Statements of the OIG Representative Did Not Render the Negotiations Committee's Recommendation Void

41. The essence of G4S's allegations of impropriety revolves around a statement made at the October 24 meeting by Peter Liu from the Office of the Inspector General. My role is not to determine whether the process would have been better had the OIG Representative not made any statement, rather, I must determine whether such statement or statements rendered the process irrevocably tainted. I conclude that the statements did not violate any settlement agreement, and did not prejudice the Negotiations Committee against G4S or otherwise render their decision arbitrary or capricious.

42. As a matter of law it is clear that the Inspector General or his/her representative has a right to attend and comment at any time during a publically noticed meeting of a committee to procurement. See Miami-Dade County Code § 2-

1076(d)(11). Accordingly, to the extent that G4S alleges that the mere making of comments by the OIG Representative was inappropriate, that argument fails.

43. In examining the comments of the OIG Representative, the only comment or question that references G4S does not rise to the level of an improper or illegal influence on the procurement process or the committee deliberation. Significantly, as discussed in the findings of fact, there is no mention of the settlement agreement involving G4S's predecessor company, or any of the other factors prohibited by the settlement agreement. The statement of the OIG Representative simply questions whether there was sufficient consideration and vetting of this company, without any reference, directly or indirectly, to any lawsuit, litigation, allegation, or settlement. There was no further consideration or discussion of this matter. Therefore, based on the right of the Inspector General or her representative to speak, the fact that the statement did not reference anything prohibited by the settlement agreement, and the fact that there was no discussion of the substance of the referenced comment, there can be no basis to disturb the award.

44. The record makes clear the basis relied upon by the committee to recommend AlliedBarton at the end of the meeting on October 24. In making the motion to recommend AlliedBarton,¹¹ Albert Hernandez clearly articulated that while another committee member favored some aspects of G4S's proposal, AlliedBarton


¹¹ G4S argues that at the October 24 meeting, before motion to recommend award to AlliedBarton, the committee reached consensus that G4S was the best value for the County. This is a misstatement of the record. No such motion to recommend G4S was made let alone voted on at the October 24 meeting, either before or after the subject comments by the OIG Representative.

scored higher in the Selection/Evaluation Committee's technical and price scoring and AlliedBarton provided the lower BAFO over the four year contract price. Once the scores and prices were fully before the committee, there was simply no other rational option. G4S's attempt to create subterfuge is simply an attempt to overturn through innuendo what the record clearly establishes—that the highest-ranked company with the lowest BAFO was recommended. This does not rise to the level of irrationality, illegality, capriciousness or even unreasonableness and the recommendation should not be disturbed.

CONCLUSION

Neither protester has established any illegal conduct, or arbitrary or capricious decisions, on the part of the County. Any defects in the process, to the extent there were any, were non-material and did not render the process illegal, irrational, arbitrary or capricious. In the end, 50 State is left with the belief that it should have made the final round, even though it scored significantly lower than the top two proposers. G4S is left with the belief that it presented a better proposal and should have edged out AlliedBarton after the oral presentations. My function is not to second guess the County's lawful and rational process, even if reasonable people may disagree. G4S is also left with the belief that improper statements from the Office of the Inspector General's representative worked against it. The County Code establishes the right of the Inspector General or her representative to speak during the process, and the comments made by the OIG representative do not violate any previous agreement or settlement. The record demonstrates that the Negotiations Committee, and in turn, the

County Mayor most certainly had a rational basis to recommend AlliedBarton for this contract award. Accordingly, I concur with the County Mayor's recommended contract award to AlliedBarton in response to Request for Proposal No. 864, Security Guard Services for Miami-Dade Transit and recommend denial of G4S's and 50 State's bid protest.


Hon. Loree Schwartz Feifer, Hearing Examiner

**CLERK OF THE
BOARD OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA**

In re: Bid Protest—Request For Proposal No. 864
Security Guard Services for Miami-Dade Transit ("MDT")
Protest of G4S Secure Solutions USA, Inc., and
50 State Security Service, Inc.

**MIAMI-DADE COUNTY'S OPPOSITION TO BID PROTESTS OF
G4S SECURE SOLUTIONS USA, INC., AND 50 STATE SECURITY SERVICE, INC.**

G4S Secure Solutions USA, Inc. ("G4S"), and 50 State Security Service, Inc. ("50 State"), (collectively, the "Petitioners") protest Miami-Dade County's (the "County") recommended award to AlliedBarton Security Services LLC ("AlliedBarton") in response to Request for Proposal Number 864, Security Guard Services for MDT (the "RFP"). The Petitioners fail to meet the heavy burden that Florida law imposes to overturn a contract award recommendation, especially here where the recommended firm, AlliedBarton, was the highest ranked technical proposer as well as offered the lowest price in the last round of negotiations. G4S, the second-ranked proposer, attempts to overturn the award by misstating the record and suggesting an alleged impropriety that simply did not happen—specifically, that the process was anything other than open, honest, and in the sunshine. G4S also attempts to overturn hours of discussion and consensus with reference to a statement from an audience member concerning its predecessor company that was not considered by the committee in reaching its recommendations. The evidence shows that the County acted in good faith, had a rational basis for the award and the process was conducted in accord with all laws governing public meetings. 50 State, the third-ranked proposer, attempts to show the process was arbitrary or that 50 State was unfairly singled out for, in sum, what amounts to the reasonable discussions and statements

placed on the record by the very selection committee members tasked with discussing the pros and cons of the various companies. In short, 50 State is trying to turn legitimate discussion into an allegation of unfair bias unsupported by the record. Additionally, 50 State argues that the selection committee was arbitrary in not "short listing" 50 State as part of the final two proposers for consideration. This ignores the clear language of the RFP and the consensus in scoring of the committee that evidenced a clear gap in scoring between the top two proposers and third-place proposer 50 State. 50 State argues that the County got it wrong and asks the hearing examiner to substitute her judgment for the judgment of County staff and administration. That is not enough. So long as the County acted in good faith, its decision should not be disturbed. Accordingly, and for the reasons more fully explored herein, both bid protests are insufficient and must fail.

I. BACKGROUND

The purpose of the RFP is to solicit "proposals from qualified firms to provide armed security guard services, in a manner that ensures the highest level of security throughout MDT's maintenance facilities, Metrorail and Metromover stations, bus yards, passenger-park and ride lots, and major bus depots" and "to award a contract for armed security guard services, enhanced with technology" at the listed locations and any additional County facilities. RFP at ¶¶ 2.1-2.2.

The RFP set forth a procedure which stated, in pertinent part:

The County may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the Proposer's best terms from a monetary and technical standpoint.

The Evaluation/Selection Committee will evaluate, score, and rank proposals, and submit the results of their evaluation to the County Mayor or designee with their recommendation. The County Mayor or designee will determine with which Proposer(s) the County shall negotiate, if any, taking into consideration the Local Preference Section above. In his sole discretion, the County Mayor or designee

may direct negotiations with the highest ranked Proposer, negotiations with multiple Proposers, or may request best and final offers.

[...]

Id. at ¶ 4.8 (Negotiations). The record demonstrates that the Evaluation/Selection Committee proceeded exactly according to this directive. Specifically, the Evaluation/ Selection Committee met on July 24 and 26, 2013, to evaluate, score, and rank the nine responsive proposals received.¹ Based on that evaluation, the proposals were scored and ranked, a motion was made, seconded, and unanimously approved to recommend inviting the three top-ranking proposers (AlliedBarton, G4S and 50 State) to return for oral presentations. These three remaining firms were informed that they would be re-scored pursuant to the RFP taking into account their oral presentations as well as their written proposals.

AlliedBarton, G4S and 50 State returned to the Evaluation/Selection Committee on August 6, 2013 for oral presentations and all were afforded an equal amount of time to make such presentations. In addition to the presentations, each proposer answered questions and responded to inquiries from committee members. These inquiries were provided in advance to each of the three proposers. After the presentations and questions and answers, the Evaluation/Selection Committee deliberated and each member re-scored the proposers separately. The total score after the oral presentations resulted in AlliedBarton in first place (technical score: 3,890/ 4,200; price score: 1,980/2,100; total score: 5,870/ 6,300), G4S in a close

¹ Initially, the County received fourteen proposals for this RFP. Three of the fourteen proposals were deemed non-responsive by the County Attorney's Office for failure to submit required bid bonds or other materials. Two additional firms failed to submit required Small Business Enterprise Program goal affidavits. These five firms were not evaluated. None of the parties challenge the findings of nonresponsiveness. The Evaluation/Selection Committee evaluated and considered the remaining nine proposals.

second place (technical score: 3,815; price score: 1,945; total score: 5,760) and 50 State a relatively distant third place (technical score: 3,433; price score: 1,760; total score: 5,193). Based on this scoring, the committee, pursuant to the instructions in the RFP, made a recommendation to the Mayor or his designee (based on a motion, second, and unanimous vote) that the top two proposers (AlliedBarton and G4S) be invited back for negotiations and Best and Final Offers (BAFOs), based on the clear superiority of the proposals and oral presentations as evidenced through the scoring and the corresponding high prospect for outstanding performance on the resulting contract. The Mayor, through his designee (Miami-Dade Internal Services Department Director Lester Sola), concurred with this recommendation and directed a Negotiations Committee to convene in order to provide a recommendation based on such negotiations and solicitations of BAFOs. *See* Memorandum from Lydia Osborne, Chairperson, Evaluation/Selection Committee to Lester Sola, Director, Internal Services Department Signed September 16, 2013, attached as Exhibit A.

The Negotiations Committee met individually with each proposer (AlliedBarton and G4S) on September 23-24, 2013, discussed the pricing of the contracts, and requested a BAFO on or before September 30, 2013. The Negotiations Committee reconvened on October 1 and 24, 2013 to review the BAFOs submitted. At the October 24 meeting, the BAFOs were reviewed and the Negotiations Committee evaluated the total contract price for the 4 year initial contract term.² Over the four year term, AlliedBarton, the highest ranked proposer, provided a

² At the October 1, 2013 meeting, the Negotiations Committee reviewed information on the first-year costs under the BAFOs offered by AlliedBarton and G4S. Based on that information, a motion was made to recommend G4S. Subsequent to this meeting, once the chairperson discovered the fact that the committee members may not have been aware of the full

BAFO of \$56,340,127, representing a savings of \$31,810 compared to G4S's BAFO of \$56,371,937. On October 24, after discussion, Negotiations Committee Member and MDT Assistant Director Albert Hernandez, P.E., made a motion to recommend award to AlliedBarton. In making his motion, Mr. Hernandez discussed the fact that the majority of Evaluation/Selection Committee Members ranked AlliedBarton the best technical proposal and best pricing value even before BAFOs. Additionally, after negotiations and BAFOs AlliedBarton actually offered a lower price than G4S, the next-ranked proposer. The motion was seconded by MDT Chief of Safety and Security Eric Muntan and was unanimously passed by the committee.

The Mayor issued his recommendation memorandum dated November 25, 2013 recommending award to AlliedBarton and concluding:

The Team [Negotiations Committee] referred back to the post-oral scores. These scores showed that five of the seven [Evaluation/Selection] Committee members scored AlliedBarton higher than G4S for the technical criteria. Additionally, four of the seven [Evaluation/Selection] Committee members scored Allied Barton higher than G4S for price. Since AlliedBarton was ranked the highest by the [Evaluation/Selection] Committee, in both technical and price, and their BAFO was lower over the initial term of the contract, the team unanimously voted that AlliedBarton should be recommended for award.

Mayor's November 25, 2013 Award Recommendation Memorandum at page 4. Subsequent to this award recommendation, the subject Bid Protests were timely filed.

four-year cost of the contract in their deliberations and in making their determinations, she caused the committee to be reconvened on October 24 with the full cost comparisons over the four-year contract term.

II. ARGUMENT

A. THE AWARD RECOMMENDATION WAS SUPPORTED BY FACTS AND LOGIC AND IS OTHERWISE CONSISTENT WITH THE RFP

1. Standard of Review

Both bid protests attempt to ask the Hearing Examiner to do the impermissible—overturn the rational decision of the County and County staff, reevaluate the proposals and become the contracting authority. Not only is this not required, it would not be permitted under the law. *See Miami-Dade County v. Church and Tower, Inc.*, 715 So. 2d 1084, 1089 (Fla. 3d DCA 1998) (“So long as such a public agency acts in good faith, even though they may reach a conclusion on facts upon which reasonable men may differ, the courts will not generally interfere with their judgment, even though the decision reached may appear to some persons to be erroneous.”); *Liberty County v. Baxter’s Asphalt & Concrete, Inc.*, 421 So. 2d 505, 507 (Fla. 1982) (“a public body has wide discretion in soliciting and accepting bids for public improvements and its decision, when based on an honest exercise of this discretion, will not be overturned by a court even if it may appear erroneous and even if reasonable persons may disagree.”). This violates a core tenet of bid protest hearings where, “the hearing officer’s sole responsibility [in reviewing a protest] is to ascertain whether the agency acted fraudulently, arbitrarily, illegally, or dishonestly.” *Dep’t of Transp. v. Groves-Watkins Constructors*, 530 So. 2d 912, 914 (Fla. 1988).

The facts demonstrate unequivocally that the Evaluation/Selection Committee and, where applicable, the Mayor or his designee, had more than a rational basis for the recommended award and there is no legal basis for overturning such award even if another party could have come to a different decision. *See Church & Tower, Inc.*, 715 So. 2d at 1089-90 (Fla. 3d DCA 1998)

(finding that while bid protest showed substantial disagreement with the action of the commission and the hearing examiner, it fell short of showing "arbitrary or capricious action").

2. The Evaluation/Selection Committee Acted Rationally In Short Listing The 2 Top Firms For Negotiations and BAFOs

Despite the County's good faith recommendation that AlliedBarton offers the best value to the County and should be recommended for award, both G4S and 50 State contend that the County got it wrong. Both Petitioners fail to satisfy the heavy legal burden required for overturning the County's recommended contract award. The bulk of 50 State's argument relies on the fact that it was not recommended for a final round of negotiations and subsequent BAFOs. The facts demonstrate more than rational bases for both the initial decision to invite the top three proposers for oral presentations (which included 50 State) and the subsequent decision to invite only the top two highest-scoring proposers for negotiations and BAFOs.³ The RFP provides a framework for how the scoring is to be allocated among the various technical and performance based metrics. See RFP at § 4.2 (Evaluation Criteria). The Evaluation/Selection Committee reviewed all responsive proposals under the criteria as outlined and each member provided their individual scores. These scores were totaled and the resulting total points awarded for each proposal provided the basis for the committee's recommendation. Specifically, the top three were recommended for oral presentations. After such presentations, the three proposers were re-scored consistent with the RFP. The re-scoring revealed two competitive and superior proposals very close in score (AlliedBarton and G4S). However, the third-ranked proposer, 50 State, was

³ It is important to note 50 State does not challenge the process which allowed it to be included in the top three firms invited to oral presentations based on the top three scores. The selective application of the "arbitrary and capricious" label seems only to apply when 50 State is left out of the final negotiations based on its relatively distant third place finish.

quantitatively in a different class from the top two proposers. *See* Memorandum from Lydia Osborne, Chairperson, Evaluation/Selection Committee to Lester Sola, Director, Internal Services Department signed September 16, 2013 at page 2-4. The discussion among the committee revealed that despite a consensus that 50 State *could* perform under the contract, the proposals submitted by AlliedBarton and G4S were far superior and offered the County a far better value at the prices offered. *See id.* This difference was clearly reflected in the stark difference in points awarded to 50 State compared to the top two proposals. *See id.* at 2.

The RFP provides the Mayor or his designee with the authority to enter into negotiations with "the highest ranked Proposer, negotiations with multiple proposers, or may request best and final offers." RFP at § 4.8. Based on the sound recommendation on the Evaluation/Selection Committee, and his review of the committee's scoring, the Mayor's designee made just such a recommendation and the top two scoring proposers moved to negotiations and eventually BAFOs. *See* Memorandum from Lydia Osborne, Chairperson, Evaluation/Selection Committee to Lester Sola, Director, Internal Services Department signed September 16, 2013 at page 4-5. The record and underlying discussions more than establish a rational basis for the recommendation to move into negotiations with the top two proposals and exclude 50 State from this final stage.

3. The Committees' Price Scoring, Best Value Analysis And Ultimate Award Recommendation Are Rational And Based On Clearly Established Procedure

An RFP, as opposed to a straight bid, is an invitation for an interested firm to design, price, and submit a proposal within the outlined specifications. Therefore, unlike a straight bid, it would be impossible to evaluate price without including a subjective component which

measures the price in relation to the value of the proposed services. In this vein, the RFP specifically outlines that:

After the evaluation of the technical proposal, in light of the oral presentation(s) if necessary, the County will evaluate the price proposals, of those Proposers remaining in consideration. The price proposal will be evaluated subjectively in combination with the technical proposal, including an evaluation of how well it matches Proposer's understanding of the County's needs described in this Solicitation, the Proposer's assumptions, and the value of the proposed services. The pricing evaluation is used as part of the evaluation process to determine the highest ranked Proposer. The County reserves the right to negotiate the final terms, conditions and pricing of the contract as may be in the best interest of the County.

RFP at § 4.6 (Price Evaluation). In another attempt to cast the County's well-supported decision as arbitrary or capricious, both Petitioners dispute the County's determination of "best value." Both Petitioners misinterpret both the concept of best value as well as the legal standard under which the determination of best value is reviewed. In both cases, Petitioners' arguments fail to meet the requisite standard as any rational decision shall not be disturbed. *See Church & Tower, Inc.*, 715 So. 2d at 1089-90 (Fla. 3d DCA 1998).

50 State argues that it could not have rationally received a lower score in the price component where it provided the lowest price among the three proposers invited to oral presentations. That is clearly contradicted by the plain language of the "Price Evaluation" Section of the RFP. *See id.* This is a subjective evaluation, in essence, a determination of "value" and therefore 50 State attempts to confuse the issue because it cannot attack the rational conclusion of the committee that its proposal offers a lower value. The fact that 50 State scored significantly lower than the two top-ranked proposers in technical points means that it was more than rational for the Evaluation/Selection Committee to conclude that 50 State offered a lower

value and a lower score was warranted even though they offered a lower raw price.⁴ There is no basis to overturn the committee's determination and scoring of 50 State's price consistent with the RFP.

Similarly, G4S attempts to have the Hearing Examiner substitute her judgment for the rational decisions of the Negotiations Committee. In the October 24 meeting of the Negotiations Committee, the committee reviewed the BAFOs over the four-year term of the contract as well as the scoring of the Evaluation/Selection Committee.⁵ Although the point total was close, AlliedBarton had higher composite scores in both the technical and pricing component and no individual member scored G4S higher than AlliedBarton for any component. The committee concluded that based on the fact that AlliedBarton had the higher scores, and offered the lowest BAFO, that it was irrefutable that AlliedBarton provided the best value to the County and should be recommended for award. This logic is not only rational, it is irrefutable. In fact, with a combination of higher scores in both technical and price combined with a lower BAFO, the

⁴ 50 State spends several pages arguing that it should have made the negotiations round because it offered a lower price and excluding it was impermissible error. As explained herein, raw price does not entitle a proposer to a better Price Score pursuant to the value analysis undertaken pursuant to the RFP. Additionally, the plain language of the RFP allows the Mayor or designee to determine that the County will award after the selection committee evaluation, or proceed to negotiation with one or more proposers. See RFP at ¶ 4.8 (Negotiations). The recommendations of the Evaluation/Selection Committee that the top two proposers were significantly better and more capable and therefore should go to a negotiations round combined with their scores provides more than a rational basis for the Mayor or designee's decision to negotiate with the two top ranked proposers.

⁵ In a previous meeting of the Negotiations Committee on October 1, the committee had incomplete information that suggested that G4S's BAFO was the lower priced BAFO. That, combined with the closeness of the scoring allowed the committee to initially recommend award to G4S. Once the Chairperson reviewed the tapes and the data, it was clear that the committee made the award based on a misunderstanding. Although G4S's price was lower in the first year, the BAFOs revealed that over the life of the contract, AlliedBarton actually offered the lower priced proposal. Therefore, the Committee was reconvened to review the full pricing data.

committee would have had no rational basis to do anything other than recommend award to AlliedBarton.

G4S cannot argue on the merits that it is entitled to award, so it has inserted arguments (discussed in Sections II.B and C, below) that the Negotiations Committee was compromised by allegedly impermissible comments or other supposed off-record discussions. In reality, the record reflects no subterfuge or improper communication. Even the comment referenced by G4S that occurred on the record had no bearing on this rational decision to award to AlliedBarton.

B. THE DECISION AND ALL COMMITTEE DELIBERATIONS WERE OPEN, RECORDED AND CONDUCTED IN THE SUNSHINE

As explained above, neither Petitioner presents any real argument nor allegation that the committee members failed to follow the criteria as outlined in the RFP. Perhaps the strong basis in factual and logical basis for the award leads the Petitioners' attempt to challenge the award recommendation or underlying process on other grounds such as alleged secret off-record discussion, impermissible statements, or bias. None of these provide a basis to overturn the award recommendation.

G4S alleges, without support, that the Negotiations Committee conducted deliberations or discussions off the record. This false allegation is refuted by the factual record and available recordings. What is true is that at the October 24 Negotiations Committee meeting, there is a request to review the scoring of the proposers. There is no "curious break" in the recording--the Committee Chairperson stated that the committee will adjourn for a bathroom break. This break took approximately ten minutes. During this time, the Committee Chairperson gathered the score sheets, and upon the meeting being resumed those scores are immediately communicated to the committee members. The idea that there was some secret discussion off the record is

ridiculous and unsupportable. What is clear is that the committee continued to deliberate for some time once the meeting was resumed, and what carried the day was the fact, as explained throughout this brief and clear upon a review of the tape, that one proposer scored higher and offered a lower price. That was the reason the original erroneous conclusion that G4S was a better value was rescinded and replaced—when reviewing the price over four years, AlliedBarton cost less. Additionally, the score sheets revealed that AlliedBarton was the near-unanimous and highest-ranked proposer.

C. THE STATEMENT OF A NON-COMMITTEE MEMBER EMPLOYEE OF THE INSPECTOR GENERAL'S OFFICE DID NOT IMPROPERLY INFLUENCE THE COMMITTEE

The essence of G4S's allegations of impropriety revolves around a statement made at the October 24 meeting by Peter Liu from the Office of the Inspector General. While Mr. Liu is an invited audience member, he has no role in deliberations and has no vote. Moreover, there is no evidence whatsoever that Mr. Liu's comment about a past settlement involving G4S's predecessor company, ever was considered by the committee members. To the contrary, what is clear from the record is there was a significant discussion of the pros and cons of both proposals, on the merits, and without reference to any previous settlement with a predecessor company. The record also makes clear the bases relied upon by the committee to recommend AlliedBarton at the end of the meeting on October 24. In making the motion to recommend AlliedBarton,⁶

⁶ G4S argues that at the October 24 meeting, before motion to recommend award to AlliedBarton, the committee reached consensus that G4S was the best value for the County. This is a misstatement of the record. No such motion to recommend G4S was made or voted on at the October 24 meeting, either before or after the subject comments by the representative from the Office of the Inspector General.

Albert Hernandez clearly articulated that while another committee member favored some aspects of G4S's proposal, in recommending Allied Barton he relied on the facts that exhaustively examined herein—AlliedBarton scored higher in the Selection/Evaluation Committee's technical and price scoring and AlliedBarton provided the lower BAFO over the four year contract price. Once the scores and prices were fully before the committee, there was simply no other rational option. G4S's attempt to create subterfuge is simply an attempt to overturn through innuendo and rumor what the record clearly establishes—that the highest-ranked company with the lowest BAFO was recommended.

D. THE STATEMENTS ATTRIBUTED TO EVALUATION/SELECTION COMMITTEE MEMBERS WERE PROPER AND DID NOT RENDER ANY SUBSEQUENT EVALUATION ARBITRARY OR CAPRICIOUS

Similarly, 50 State attempts to use comments on the record to obfuscate or confuse what was a proper process and a rational award. Specifically, 50 State argues that comments by the Evaluation/Selection Committee members unfairly prejudiced the committee against 50 State. The record establishes that 50 State was one of the top three highest ranked proposers and made the oral presentation stage before the Evaluation/Selection Committee. 50 State relies on the unbelievable proposition that the committee was prejudiced simply because the committee members expressed their honest opinions in evaluation of the company and its proposal. Specifically, the comment attributed to Horace Graham stated that, in pertinent part, 50 State had some issues at the start in ramping up under the contract. It is unclear how this statement, which is an honestly held belief of Mr. Graham based on his expertise as a Miami-Dade Transit Safety and Security employee tasked with working with 50 State, shows any impermissible bias or prejudice.

Finally, 50 State questions a comment it alleges was made by Eric Muntan, Miami-Dade Transit Safety and Security Chief. The statement questions whether the drop in crime over the course of the contract administered by 50 State can be entirely attributed to 50 State where there is an overall drop in crime countywide. This is on its face a rational, non-prejudicial comment worthy of discussion by the group tasked with evaluating past performance. Overall, 50 State simply is grasping at straws by taking two reasonable statements and trying to create prejudice where none existed. They are inviting precisely the after-the-fact substitution of judgment by the Hearing Examiner for the committee which is not permitted by law.

Neither Petitioner can demonstrate that the County acted fraudulently, arbitrarily, illegally or dishonestly in recommending a contract award to the proposer with the highest scores and lowest BAFO. Absent this showing, both protests must fail.

Conclusion

Accordingly, the County respectfully requests that the Hearing Examiner deny both G4S and 50 State's bid protests and fully affirm the County's recommended contract award for Request For Proposal No. 864, Security Guard Services for Miami-Dade Transit.

Respectfully submitted,

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Facsimile: (305) 375-5634
E-mail: bruce2@miamidade.gov
alexbokor@miamidade.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via electronic mail this 13th day of December, 2013 to:

Judge Loree Feiler, Hearing Examiner (loreefeiler@gmail.com) (lsfeiler@aol.com)

Albert E. Dotson, Jr., Esq. (adotson@bilzin.com)
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, FL 33131
Attorney for G4S

Joseph M. Goldstein, Esq. (jgoldstein@shutts.com)
Shutts & Bowen, LLP.
200 East Broward Blvd., Suite 2100
Ft. Lauderdale, FL 33301
Attorney for 50 State

Dan Gelber, Esq. (Dan@gsgpa.com)
Murray Greenberg, Esq., (MGreenberg@gsgpa.com)
GELBER SCHACHTER & GREENBERG, P.A.
1441 Brickell Avenue, Suite 1420
Attorneys for AlliedBarton

Assistant County Attorney Bruce Libhaber (bruce2@miamidade.gov)

Miami-Dade County Clerk of the Board of County Commissioners(clerkbcc@miamidade.gov)

Fara Diaz, Clerk of the Board (Farad@miamidade.gov)

/s/ Alexander S. Bokor

EXHIBIT

A

OFFICE OF COUNTY ATTORNEY, MIAMI-DADE COUNTY, FLORIDA
TELEPHONE (305) 375-5151

Memorandum



Date:

To: Lester Sola
Director
Internal Services Department

Thru: Miriam Singer, CPPO
Assistant Director
Internal Services Department

From: Lydia Osborne, CPPO *Lydia Osborne*
Procurement Contracting Officer 2
Chairperson, Evaluation/Selection Committee

Subject: Report of Evaluation/Selection Committee for RFP No. 864, Security Guard Services for Miami-Dade Transit

The County issued a solicitation to obtain proposals from qualified security guard firms to provide armed security guard services throughout Miami-Dade Transit's (MDT) maintenance facilities, Metrorail and Metromover stations, bus yards, passenger park and ride lots/facilities, and major bus depots. The County intends to utilize the County's existing technology system to a) integrate security equipment and technology with the human element, b) maximize MDT's security system effectiveness, and c) to both protect its personnel, patrons and/or property by means of well-trained, experienced, alert, interested, and reliable security personnel.

The Evaluation/Selection Committee (Committee) has completed the evaluation of proposals submitted in response to the solicitation following the guidelines published in the solicitation.

Committee meeting dates:

June 18, 2013 (kick-off meeting)
July 24, 2013 (evaluation meeting, scoring)
July 26, 2013 (evaluation meeting, scoring)
August 6, 2013 (oral presentations, re-scoring, and recommendation)

Verification of compliance with contract measures:

A Small Business Enterprise (SBE) 15% subcontractor goal was assigned to this solicitation. The Department of Regulatory and Economic Resources, Small Business Development (SBD) has determined (see attached memo) that the following proposers are in compliance:

1. 60 State Security Service, Inc.
2. Allied Barton Security Services, LLC
3. Felck Security Corporation
4. G4S Secure Solutions (USA), Inc.
5. Kent Security Services, Inc.
6. McRoberts Protective Agency, Inc.
7. Navarro Group Ltd., Inc.
8. P.G. Security, Inc., d/b/a Platinum Group Security, Inc.
9. Security Alliance, LLC

SBD has determined that the following proposers are not in compliance:

1. American Guard Services, Inc.
2. US Alliance Management Corp., d/b/a U.S. Security

Page 2

Memo to Lester Sola

Report of Evaluation/Selection Committee for RFP No. 864, Security Guard Services for Miami-Dade Transit

The proposals from American Guard Services, Inc. and US Alliance Management Corp., d/b/a/ U.S. Security were not evaluated by the Committee.

Verification of compliance with minimum qualification requirements:

The solicitation had minimum qualification requirements which were reviewed by the Chairperson and Eric Muntan of MDT. Eleven of the 14 proposers met the requirements. Three of the proposers, Melsha Security Service, Inc., Quest Security, and Unlimited Security, did not meet the requirements. Refer to Section "Other Information".

Local Certified Service-Disabled Veteran's Business Enterprise Preference:

Veteran's Preference was considered in accordance with the applicable ordinance. None of the proposers qualified for the preference.

Summary of scores:

The preliminary technical scores are as follows:

Pre-Oral Presentations

Proposer	Technical Score (max. 4,200)
1. G4S Secure Solutions (USA), Inc.	3,925
2. Allied Barton Security Services, LLC	3,885
3. 50 State Security Service, Inc.	3,483
4. McRoberts Protective Agency, Inc.	3,144
5. Security Alliance, LLC	3,100.5
6. Navarro Group Ltd., Inc.	2,770
7. Kent Security Services, Inc.	2,765
8. Felck Security Corporation	2,762
9. P.G. Security, Inc., d/b/a Platinum Group Security, Inc.	2,215

The Committee considered the scoring guidelines in accordance with Implementing Order 3-34 (Formation and Performance of Selection Committees), and determined that firms scoring at least 80% of the available technical score (i.e., 3,360 out of the available 4,200) warranted further consideration. The 80% threshold falls within the 70-89% range in the scoring guidelines, which is rated as "Good". The Committee decided to hold oral presentations with the three highest ranked proposers who fell within the threshold; G4S Secure Solutions (USA), Inc., Allied Barton Security Services, LLC, and 50 State Security Service, Inc. The Committee re-rated the proposals after the oral presentations. Price proposals were reviewed for these proposers after the review and scoring of technical proposals.

The final scores are as follows:

Post-Oral Presentations/Final Scores

Proposer	Technical Score (max. 4,200)	Price Score (max. 2,100)	Total Combined Score (max. 6,300)
1. Allied Barton Security Services, LLC	3,880	1,980	5,870
2. G4S Secure Solutions (USA), Inc.	3,815	1,945	5,760
3. 50 State Security Service, Inc.	3,433	1,760	5,193

Memo to Lester Sola

Report of Evaluation/Selection Committee for RFP No. 864, Security Guard Services for Miami-Dade Transit

Price/Cost submitted is presented below:

Proposers	Price/Cost Submitted								
	Hourly Price			Annual Price		Monthly Cost		Price per Unit	
	SO	S	D	PM	CA	LMV	GC	B	MD
Allied Barton Security Services, LLC	\$25.10	\$29.98	\$24.98	\$144,768	\$64,001.60	\$3,366.67	\$440	\$600	\$6,422.79
G4S Secure Solutions (USA), Inc.	\$25.87	\$34.13	\$27.56	\$161,214.48	\$73,100.88	\$1,864	\$360	\$800	\$110
50 State Security Service, Inc.	\$23.13	\$25.66	\$20.66	\$110,000	\$55,000	\$2,100	\$600	\$600	\$3,800

SO= Security Officer; S=Supervisor; D=Dispatcher; PM=Project Manager; CA=Crime Analyst; LMV=License Motor Vehicle; GC=Golf Cart; B=Bicycle; MD=Mobile Device

Local Preference:

Local Preference was considered in accordance with applicable ordinance, but did not affect the outcome.

Other Information:**Non-Responsive Proposals:**

Three proposers, Melsha Security Service, Inc., Quest Security, and Unlimited Security, did not meet the submission requirements as the firms did not submit a bid security bond in the amount of \$10,000 with their proposals, as required in the solicitation. In addition, Quest Security and Unlimited Security failed to submit Form A-1, signature page of the proposal, and there was no signed cover letter from the company's director, on either of the firms' letterhead, indicating their intent to be bound by their offer. A request for responsive determination was forwarded to the County Attorney's Office (CAO). Per the CAO's determination (attached), the proposals received from the three proposers, were deemed non-responsive.

Another proposer, American Guard Services, Inc., submitted a proposal to the Clerk of the Board two days after the proposal submittal deadline. A request for responsive determination was forwarded to the CAO. The CAO determined (memorandum attached) the proposal was responsive in relation to timeliness, since the proposer submitted its proposal to FedEx two days prior to the submittal deadline, and contracted for priority overnight service. As such, the late arrival of the proposal was through no fault of the proposer, nor did the proposer receive a competitive advantage.

Non-Compliant Proposals

Two firms, American Guard Services, Inc., and US Alliance Management Corp., d/b/a U.S. Security failed to submit the required Schedule of Intent Affidavit reflecting the certified SBE firms being utilized to meet the established 15% SBE Goal. Pursuant to Section (3)B.6.a of the Code: "Failure to submit the required Schedule of Intent Affidavit or commitment letter at the time of bid submission shall render the bid non-responsive". SBD determined that both firms were not in compliance.

Removal of Member from Committee

Due to a conflict in interest with one of the firms submitting a proposal, one voting member, Lauren Stover, was replaced with the alternate member, Michael Dioppa. The substitution was made prior to the evaluation meeting.

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Memo to Lester Sola

Report of Evaluation/Selection Committee for RFP No. 864, Security Guard Services for Miami-Dade Transit

Review of Score Sheets

Upon review of the score sheets after the Committee meeting of August 6, 2013, it was discovered that a score for a Proposer, under the Criteria for Proposer's Recruitment Plan, was inadvertently miscalculated by the Chairperson when calculating the composite technical scores. The Chairperson verified the scoring by reviewing the Committee members' signed evaluation sheets and by listening to the tape recording of the meeting. This correction resulted in a higher technical score for G4S Secure Solutions (USA) Inc. from 3,890 points to 3,815 points. This change did not however, affect the outcome of the rankings, and the firm remained the second ranked firm. The Committee was not reconvened.

Negotiations:

The Committee recommends that the County enter into negotiations with the two highest ranked proposers, AlliedBarton Security Services, LLC, and G4S Secure Solutions (USA) Inc. The following individuals will participate in the negotiations:

Lydia Osborne, Procurement Contracting Officer, Internal Services Department
Eric Muntan, Chief, Office of Safety and Security, Miami-Dade Transit
Daniel Payne, Chief of Security, Internal Services Department
Albert Hernandez, Deputy Director of Engineering, Miami-Dade Transit
Jose Guerra, Security Supervisor, Miami-Dade Transit

Price was submitted based on a) the hourly rates for various levels of personnel for service during the initial four year term; b) monthly rates per unit for special equipment (licensed motor vehicle and golf carts); and c) one-time charges per unit for bicycles and mobile video devices. The approximate number of hours annually and the quantity of special equipment is an estimate based on historical data. The proposals included prices that will be negotiated.

Consensus Statement:

Overall Statement

The Committee determined that the recommended proposers, AlliedBarton Security Services LLC, and G4S Secure Solutions (USA) Inc., have a) the necessary qualifications; b) vast relevant experience and past performance in providing quality security guard service, with specialization in transit operations; c) technical capacity; and d) trained security guard personnel to provide the armed security guard services to meet the needs of the County. Both recommended firms have experience in conducting internal and external sweeps of buildings and vehicle searches. The Committee determined that it was beneficial to recommend the two highest ranked firms, as both firms have demonstrated the capability and capacity to provide the services, and were within 110 points of each other's total combined scores.

The proposed sub-contractor for both recommended firms, Professional Protection and Investigations Agency, is also the incumbent's subcontractor, and has the required qualifications, relevant experience and technical capacity to meet the 15% subcontractor goal assigned to the solicitation. Both firms' proposal provided a well-developed and task appropriate approach to the required services, and included detailed tasks and matrix transition plans, and training curricula which address unique security and safety requirements in a transit environment.

AlliedBarton Security Service LLC

AlliedBarton Security Service LLC, the highest ranked proposer, has been in existence since 1957, and has multiple transit and rail contracts with North Carolina, New York, Nevada, Washington and Chicago, accounting for more than 1 million hours of service in transit security. The firm has current contract experience with light rail systems, rail platforms, buses, commuter rails, rail yards and bus yards. The management staff, including the proposed Project Manager, has, in addition to high military and law enforcement background, vast experience in rail and transit systems.

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Memo to Lester Sola

Report of Evaluation/Selection Committee for RFP No. 864, Security Guard Services for Miami-Dade Transit

AlliedBarton Security Service, LLC, has proposed using a Team Time Portal which integrates with the Win Team platform, and supports the proposed Biometric Reader System. This system will run on any device with a Windows operating system and features full integration of time and attendance for payroll and billing processing. The firm will partner with Habsi Kaba to provide a two-day mental health and crisis resolution training to personnel. This training will a) increase awareness and knowledge of mental health; b) assess and identify risk factors and warning signs; c) improve effective communication; d) develop specific de-escalation techniques; e) respond to crisis situations in a strategic and safe manner; and f) increase awareness of individual safety and well-being. The firm will also incorporate mandatory behavioral recognition training. The firm's turnover rate is 28%, with a 60% minority workforce. The firm has the resources to transition within a 60-90 day period.

G4S Secure Solutions (USA) Inc.

G4S Secure Solutions (USA) Inc., the second ranked proposer, operates in over 120 countries, and was the previous provider of security guard services for MDT from 1989 through 2009. The firm has high exposure to transit agencies in Washington, Oregon and Milwaukee. The firm's key personnel have the relevant experience in transit and train station environments with multiple governmental agencies. The proposed Operations Manager worked for two years under the MDT contract which allows for a decreased learning curve. The firm has an agreement with the U.S. Army through a specialized recruitment program that allows recruitment for pre-qualified returning veterans.

G4S Secure Solutions (USA) Inc. has designed proprietary software, SecureTrax, that automates time and attendance, and validates proof of presence of personnel. The system is complimented by the availability of Android hand-held communication devices. In addition to mandatory training for new personnel, the firm will emphasize cultural diversity training, along with Dale Carnegie customer service training. Supplemental training will include a) Department of Homeland Security Frontline Responders Training course, addressing terrorism awareness; b) training on recognizing suspicious and unusual activity; c) conflict resolution; and d) active shooter training. The firm's turnover rate is 26%. The firm has the resources to transition within a 60 day period.

Copies of the score sheets are attached for each Evaluation/Selection Committee member, as well as a composite score sheet.

Approved


Lester Sola
Director


Date 9/16/13

MIAMI-DADE COUNTY BOARD OF COUNTY COMMISSIONERS

50 STATE SECURITY SERVICES,
INC., and 4GS SECURE SOLUTIONS
USA, INC.

Petitioners,

v.

RFP No., 864 (Security Guard
Services for Miami-Dade Transit)

MIAMI-DADE COUNTY, MIAMI-
DADE TRANSIT DEPARTMENT

Respondents,

and

ALLIEDBARTON SECURITY SERVICES LLC.

Intervenor

CLERK OF THE BOARD
2013 DEC 11 PM 3:37
MIAMI-DADE COUNTY, FLA.

MOTION TO INTERVENE

AlliedBarton Security Services LLC ("AlliedBarton") moves to intervene in this matter pursuant to Rule 1.230 of the Florida Rules of Civil Procedure, stating:

1. On November 25, 2013, the County Mayor filed his recommendation that Contract RFP No. 864, Security Guard Services for Miami-Dade Transit, be awarded to AlliedBarton.

2. This bid protest proceeding was initiated by protestors, 4GS Secure Solutions USA, Inc. and 50 State Security Service, Inc., which both filed bid protests in connection with RFP No. 864.

3. The Honorable Judge Loree S. Feiler has been appointed as the Hearing Examiner and the hearing has been set for Monday, December 16, 2013 at 9:30 a.m.

4. Pursuant to Rule 1.230 of the Florida Rules of Civil Procedure, any person "claiming an interest in pending litigation may at any time be permitted to assert a right by intervention." A party has the requisite interest to intervene where the interest is "in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." *Union Cent. Life Ins. Co. v. Carlisle*, 593 So.2d 505, 507 (Fla. 1992).

5. As the highest-ranked proposer and intended awardee, AlliedBarton has a direct and immediate interest in any decision occurring in this proceeding. AlliedBarton thus respectfully submits that it has the requisite interest to intervene.

WHEREFORE, AlliedBarton respectfully requests that it be allowed to intervene in this proceeding, together with such other and further relief deemed just and appropriate.

Respectfully submitted,

COZEN O'CONNOR

Counsel for AlliedBarton

200 South Biscayne Boulevard, Suite 4410

Miami, Florida 33131-4332

Telephone: (305) 704-5940

Facsimile: (305) 704-5950

By


Richard M. Dunn

Fla. Bar. No.: 126953

rdunn@cozen.com

Raquel Fernandez

Fla. Bar. No.: 55069

rfernandez@cozen.com

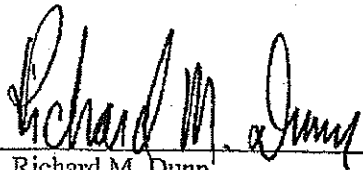
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of December, 2013, a true and correct copy of the foregoing was sent via electronic and U.S. Mail to:

Albert E. Dotson, Jr.
Bilzin Sumberg Baena Price & Axelrod LLP
1450 Brickell Avenue, 23rd Floor
Miami, FL. 33131
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Shutts & Bowen, LLP.
200 East Broward Blvd., Suite 2100
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954-847-3837 (telephone)
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Bruce Libhaber
Miami-Dade County Attorney's Office
111 Northwest 1st Street – Suite 2810
Miami, FL. 33128
bruce2@miamidade.gov

By 
Richard M. Dunn



MEMORANDUM

TO: LISTED DISTRIBUTION

DATE: December 5, 2013

FROM: Christopher Agrippa, Director
Clerk of the Board Division

SUBJECT: Bid Protest – RFP No. 864
Security Guard Services for
Miami-Dade Transit

Pursuant to Section 2-8.4 of the Code and Implementing Order 3-21, Bid Protest Procedures, a bid protest was filed with the Clerk of the Board Division on December 2, 2013, in connection with the foregoing Contract. The protest was filed by Attorney Albert E. Dotson, Jr., representing G4S Secure Solutions USA, Inc.

A filing fee in the amount of \$5,000.00 was submitted with the bid protest.

If you have any questions pertaining to this protest, please contact Fara C. Diaz at (305) 375-1293.

CA/fcd

Attachments

DISTRIBUTION:

Honorable Members, Board of County Commissioners (via email)
Honorable Carlos A. Giménez, Mayor, Miami-Dade County (via email)
Alina T. Hudak, Deputy Mayor/County Manager (via email)
R.A. Cuevas, County Attorney (via email)
Hugo Benitez, Assistant County Attorney (via email)
Bruce Libhaber, Assistant County Attorney (via email)
Jeneffe Snyder, County Attorney's Office (via email)
Rita Gonzalez, County Attorney's Office (via email)
Elizabeth Alfonso Ruiz, County Attorney's Office (via email)
Charles Anderson, Commission Auditor (via email)
Elizabeth Owens, BCC Legislative Analyst, Commission Auditor's Office (via email)
Lester Solá, Director, Internal Services Department (via email)
Miriam Singer, CPPO, Assistant Director, Internal Services Dept. (via email)
Amos Roundtree, Director, Purchasing Department, Internal Services Dept. (via email)
Walter Fogarty, Manager, Procurement Vendor Services, Internal Services Dept. (via email)
Ray Baker, Assistant to the Director, Internal Services Dept. (via email)
Lydia Osborne, Procurement Contracting Officer, Internal Services Dept. (via email)

HARVEY RUVIN, CLERK OF THE BOARD

IN RE: THE PROTEST OF THE
NOVEMBER 25, 2013 MAYOR'S
RECOMMENDATION FOR AWARD
OF CONTRACT NO. 864 FOR
SECURITY GUARD SERVICES FOR
MIAMI-DADE TRANSIT

G4S SECURE SOLUTIONS (USA) INC.,

Petitioner,

v.

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida,

Respondent.

CLERK OF THE BOARD
2013 DEC -5 PM 3:05
HARVEY RUVIN, CLERK OF THE BOARD

PETITIONER G4S SECURE SOLUTIONS (USA) INC.'S BID PROTEST
AND SUPPORTING EXHIBITS

Petitioner, G4S Secure Solutions (USA) Inc. ("G4S"), by and through undersigned counsel and pursuant to Sections 2-8.3 and 2-8.4 of the Miami-Dade County ("County") Code and Implementing Order 3-21, respectfully files its Bid Protest and Supporting Exhibits. G4S hereby incorporates by reference its timely filed December 2, 2013 Written Intent to Protest, which set forth the facts and legal grounds that G4S relies upon in support of its bid protest, as its formal Bid Protest. In support of its Written Intent to Protest and Bid Protest, G4S relies upon the Exhibits enumerated below.¹

To avoid unnecessary duplication of public documents, all of which are public records under Chapter 119 of the Florida Statutes and some of which have already been provided by the third-ranked proposer to the underlying solicitation in connection with its bid protest (the "50 State Protest"), and in furtherance of the County's environmental policy, G4S incorporates and

¹ Pursuant to Implementing Order 3-21, G4S reserves the right to supplement its Bid Protest and Exhibits based up records received pursuant to G4S's public records request timely filed on December 2, 2013.

includes as its Exhibits all documents in the files of the County related to Request for Proposals No. 864 (the "RFP") and those documents that, pursuant to the Florida Rules of Evidence, shall or may be considered by a tribunal under the evidentiary doctrine of judicial notice. Additionally, G4S will incorporate some of its Exhibits only by reference. The Exhibits will, however, be provided at the time of the Hearing for review by the Hearing Examiner.

1. Written Intent to Protest, filed by G4S on December 2, 2013. (Attachment 1.)
2. November 25, 2013 Recommendation of Award. (Incorporated by reference and attached to 50 State Protest as Exhibit A.)
3. RFP, as Amended. (Incorporated by reference and attached to 50 State Protest as Exhibit B.)
4. G4S's Proposal to the RFP. (Incorporated by reference.)
5. G4S's Best and Final Offer to the RFP. (Incorporated by reference.)
6. Proposal to the RFP of AlliedBarton Security Services, LLC ("AlliedBarton"). (Incorporated by reference.)
7. AlliedBarton's Best and Final Offer to the RFP. (Incorporated by reference.)
8. April 2, 2013 Memorandum re: Appointment of Selection Committee for RFP. (Incorporated by reference.)
9. Report of Evaluation/Selection Committee for RFP. (Incorporated by reference.)
10. Pre-oral presentation score sheets. (Incorporated by reference.)
11. Post-oral presentation score sheets. (Incorporated by reference.)
12. County Resolution R-204-10 and associated Agenda Package. (Incorporated by reference and excerpts attached hereto as Attachment 2.)
13. June 18, 2013 kick-off meeting. (Incorporated by reference.)
14. June 19, 2013 kick-off meeting. (Incorporated by reference.)
15. July 24, 2013 evaluation meeting. (Incorporated by reference.)
16. July 26, 2013 evaluation meeting. (Incorporated by reference.)

17. August 6, 2013 oral presentation of AlliedBarton. (Incorporated by reference.)
18. August 6, 2013 oral presentation of G4S. (Incorporated by reference.)
19. August 6, 2013 oral presentation of 50 State. (Incorporated by reference.)
20. September 23, 2013 pre-negotiations meeting. (Incorporated by reference.)
21. September 23, 2013 negotiation meeting with G4S. (Incorporated by reference.)
22. September 24, 2013 negotiation meeting with AlliedBarton. (Incorporated by reference.)
23. October 1, 2013 meeting of the Negotiation Committee. (Incorporated by reference.)
24. October 24, 2013 meeting of the Negotiation Committee. (Incorporated by reference.)
25. Response to the RFP of 50 State Security Services, Inc. (Incorporated by reference.)

Respectfully submitted,

BILZIN SUMBERG BAENA
PRICE & AXELROD LLP
1450 Brickell Avenue, 23rd Floor
Miami, Florida 33131
Phone (305) 350-2354
Fax (305) 351-2170

By: 

Albert E. Dotson, Jr., Esq.
adotson@bilzin.com
Florida Bar No. 724203
Eric Singer, Esq.
esinger@bilzin.com
Florida Bar No. 87961

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, pursuant to IO 3-21, a true and correct copy hereof has been furnished this 5th day of December, 2013, via hand-delivery to the Clerk of the Board, with copies furnished via mail to Robert A. Cuevas, Jr., County Attorney, 111 NW 1st Street, Miami, FL 33128; Allied Barton Security Services, 161 Washington Street, Suite 600, Conshohocken, PA 19428; 50 State Security Service, Inc. 915 N.E. 125 Street, Suite 200, North Miami, FL 33161; Feick Security Corporation, 14600 Biscayne Boulevard, North Miami Beach, FL 33181; Kent Security Services, Inc., 14600 Biscayne Boulevard, North Miami Beach, FL 33181; McRoberts Protective Agency, Inc., 87 Nassau Street, 2nd Floor, New York, NY 10038; Navarro Group Ltd., Inc., 4100 N.W. 3rd Court, #100, Plantation, FL 33317; P.G. Security, Inc. d/b/a Platinum Group Security, Inc., 212 North Federal Highway, Deerfield Beach, FL 33441; Security Alliance, LLC, 8323 N.W. 12th Street, Suite #218, Doral, FL 33126; American Guard Services, Inc., 1015 N. America Way, Suite 108, Miami, FL 33132; US Alliance Management Corp., d/b/a U.S. Security, 3555 N.W. 77th Avenue, #106, Doral, FL 33122; Melsha Security Services Corp., 9979 N.W. 7th Avenue, Miami, FL 33150; Quest Security Services Inc., 26 Roosevelt Avenue, Kingston 6, Jamaica; and Unlimited Security, 13920 Van Buren Street, Miami, FL 33176.



Albert E. Dotson, Jr.

MIAMI 3955915.2 80782/43737

Attachment 1



CLERK OF THE BOARD

2013 DEC -2 PM 2:53

CLERK OF MIAMI-DADE COUNTY
1400 BICKELL AVENUE
MIAMI, FL 33131

Albert E. Dotson, Jr.
Tel 305-350-2411
Fax 305-351-2217
adotson@bilzin.com

December 2, 2013

VIA HAND DELIVERY

Harvey Ruvin
Clerk of the Board
Stephen P. Clark Government Center, Suite 1702
111 NW 1st Street
Miami, FL 33128

Re: **The Protest of the November 25, 2013 Mayor's Recommendation to Award Contract No. 864 for Security Guard Services for Miami-Dade Transit**

Dear Clerk of the Board:

Petitioner, G4S Secure Solutions USA Inc. ("G4S"), by and through the undersigned counsel, respectfully and timely submits, pursuant to Section 2-8.4 of the Miami-Dade County (the "County") Code and Implementing Order 3-21, its Written Intent to Protest the November 25, 2013 Recommendation of the County Mayor (the "Recommendation") to award Contract No. 864 for Security Guard Services for Miami-Dade Transit (the "Contract") to Allied Barton Security Services ("Allied").¹ For the reasons set forth below, G4S respectfully requests a determination that the Recommendation of an award of the Contract to Allied is based on a violation of state law and applicable County ordinances and resolutions, is also based on a violation of the County's contractual obligations with G4S, and is therefore erroneous, arbitrary and capricious, and contrary to law and must be rejected.

In support of its Petition, G4S incorporates by reference all of the facts contained in the Request for Proposals No. 864 (the "RFP") and G4S's proposal to the RFP. G4S will also rely upon and admit into evidence all public records related to the RFP and Recommendation. G4S has submitted a timely public records request for these records and, upon receipt, reserves the right to supplement its Petition and supporting documentation, in accordance with Implementing Order 3-21.

G4S also relies upon the deliberations of the Negotiation Committee ("Committee"), which was charged with determining which of the two proposers that proceeded to negotiations, G4S and Allied, provides the "best value" to the County pursuant to the RFP's selection criteria. Significantly, at the conclusion of the Committee's October 1, 2013 meeting, the Committee unanimously concluded that G4S provides the best value to the County and should be

¹ Pursuant to Implementing Order 3-21, G4S submits with this protest a check made out to the Clerk of the Board in the amount of \$5,000.00, representing the filing fee.

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recommended for award of the Contract. Then again, at the Committee's October 24, 2013 meeting, the Committee determined that G4S provides the best value to the County. On both occasions, the Committee provided specific reasons, based on the RFP's selection criteria, for its recommendation.

Apparently not content with outcome of the Committee's reasoned evaluation based on the required selection criteria, a representative of the County Office of the Inspector General ("OIG"), inserted himself into the process. The OIG was NOT responding to any questions raised and was NOT acting pursuant to any authority. Curiously, the OIG interrupted the Committee's proceedings and incredibly, *after the Committee appeared to have concluded its October 24, 2013 deliberations*, the OIG encouraged the Committee to reconsider its conclusion in light of the County's prior litigation with Wackenhut Corporation² — *a factor prohibited from consideration by Resolution of the Board of County Commissioners.*³ Immediately following the OIG's interruption after the Committee twice concluded that G4S was the "best value" for the County, there is an unexplained break in the tape and the recording of the deliberations and it is clear that the County stops recording the meeting. There is a jump in the discussion and a reversal of Committee consensus. There is no explanation of what was done, what was said, how long the recording had stopped, who else entered the room, what other information was discussed, were there any other improper factors considered, and the list goes on. When the recording resumed, the Committee decided to reverse itself and the entire focus of the Committee's considerations and instead recommend Allied for award of the Contract.

To clarify, at the October 24, 2013 meeting of the Committee, the following events occurred:

1. The Committee for a second time reached consensus that G4S was the best value for the County and about to recommend award to G4S for a second time, fully explaining its reasons for doing so after an hour of deliberations on October 24th and the October 1st meeting.
2. The OIG interrupts the Committee after the Committee reached its consensus and inserts an unlawful factor for the Committee's consideration.
3. The recording is stopped.
4. The audio recording resumed, and the Committee reverses itself and within only seven minutes recommends Allied for award of the Contract.

This conduct is, in brief, reprehensible. It flies in the face of both procurement law and essential principles of open government, and the resulting Recommendation simply cannot stand.

1. The Decision to Award the Contract to Allied is Arbitrary and Capricious.

Under Florida law, an arbitrary decision is one not supported by facts or logic, and a capricious decision is one made without thought or reason. *Agrico Chemical Co. v. Dep't of Env'tl. Regulation*, 365 So. 2d 759, 763 (Fla. 1st DCA 1978). The Recommendation to award the Contract to Allied is arbitrary because it is not supported by facts and logic: G4S's proposal and Best and Final Offer ("BAFO") was twice determined to be the best qualitatively and the

² The Wackenhut Corporation is the predecessor entity to G4S.

³ Miami-Dade County Resolution No. R-204-10.



best value. Only after an unlawful factor was introduced by the OIG did the Committee begin reversing itself. Accordingly, the Recommendation is not "bottomed upon facts reasonably tending to support its conclusions." *Miami-Dade Cnty. v. Church & Tower, Inc.*, 715 So. 2d 1084, 1089 (Fla. 3d DCA 1998) (quoting *Culpepper v. Moore*, 40 So. 2d 366, 370 (Fla. 1949)). The Recommendation is also capricious, as the ultimate decision to award the Contract to Allied was not based on any analysis of permissible considerations pursuant to the RFP, but rather impermissible, erroneous, or no considerations at all.

For example, the information provided by the OIG and relied upon by the Committee to reverse its recommendation from G4S to Allied was not a permissible consideration to begin with. Pursuant to the settlement agreement between G4S and the County, as adopted by the Board of County Commissioners through County Resolution R-204-10, the issues raised by the OIG, which relate to prior litigation between G4S and the County, may in no way be considered by the County in connection with this procurement. Because the Committee's reversal was unequivocally the result of this improperly considered factor, the Recommendation cannot be sustained.

2. The Decision to Award the Contract to Allied Was Erroneous and Made in Violation of Applicable Laws and Procedures.

The Sunshine Law, Section 286.011, Florida Statutes, requires that all decisions of a selection committee be made at a public meeting, in the sunshine, with minutes recorded. *E.g., Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999); see also Miami-Dade County Commission on Ethics and Public Trust Opinion No. RQO 12-02 (January 25, 2012). Further, Miami-Dade County Administrative Order 3-31 requires that all proceedings of selection and negotiation committees "shall be audiotaped." Incredibly, the most crucial decision of the Committee during the entire RFP process—the Committee's retraction of its well-reasoned, on-the-record determination that G4S represented the "Best Value" to the County and substitution of that decision with a recommendation to instead award the Contract to Allied—was made in clear violation of these bedrock open-government requirements and is therefore void. Instead, there is a curious break in the recording; however, when the recording begins again it is clear that the OIG's influence reversed the Committee's unanimous decision of October 1, 2013 in favor of G4S and changed the Committee's October 24th consensus in favor of G4S instead to Allied.

3. The Decision to Award the Contract to Allied Was Made in Violation of County Resolution R-204-10, the County's Settlement Agreement with G4S, and the County Ethics Ordinance.

At the October 24, 2013 meeting of the Committee, the OIG improperly influenced the Committee, in violation of the Cone of Silence, to request that the Negotiation Committee consider factors prohibited by County Resolution R-204-10. See Miami-Dade County Code § 2-11.1(f). This flagrant violation of the County Ethics Ordinance directly and unquestionably influenced the result of the evaluation process, as the Committee shortly thereafter changed its recommendation from an award to G4S to an award to Allied. Because the Committee's decision was based upon information apparently provided in violation of the Cone of Silence, it cannot be sustained.



Even ignoring the apparent Cone of Silence violation, the OIG very clearly unduly influenced the Committee and the selection process. After the entire deliberations on October 1, 2013 and after an hour of deliberations on October 24, 2013, the Negotiations Committee reached consensus twice that G4S was the best value for the County. More specifically, 1:03 minutes into the October 24, 2013 meeting, the Negotiations Committee expresses its consensus three to one in favor of G4S. Then, within sixty seconds, the OIG sparks a conversation about prior litigation by Wackenhut against the County. To the extent that the OIG has an unwritten right to speak to the Committee during its deliberations, the OIG's clear efforts to change the result, after a consensus vote had been reached for a second time, and introduce new, impermissible information was a clear exploitation of that right that undermined the fairness and integrity of the evaluation process. The OIG's actions not only had the potential to undermine the result, and thus create an appearance of impropriety, but actually did change the result, as evidenced by the Committee's abrupt, unexplained (on the record) switch from G4S to Allied.

4. The Decision to Award the Contract to Allied is Inconsistent with the Proposals and Best and Final Offers and the RFP.

The information contained in the Recommendation, which purportedly forms the basis for the decision to award the Contract to Allied, does not comport with the RFP or the proposals and BAFOs submitted by G4S and Allied. For example, although the Recommendation claims that Allied's price is \$31,810 lower than G4S's price, in reality, G4S submitted the superior offer and provides the best value to the County. As recognized by the Committee at the October 1, 2013 and the October 24 meeting when explaining, in detail, why G4S should be recommended for award, in an RFP, price is only one consideration, and the ultimate consideration is which proposer provides the best *value*, in light of what is being proposed. The Committee explained, for example, that G4S provides superior technology, a more experienced management team, and is uniquely qualified to transition, offers the County a savings of over \$195,000 in the first year compared to Allied and over four years -- assuming no changes -- Allied would provide a savings of \$31,810 and that the advantages of G4S more than justify the \$31,810 premium over four years—a difference of one-twentieth of one percent for this 56-plus million dollar contract.

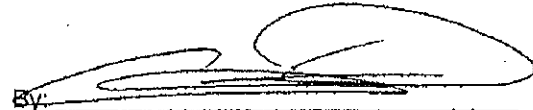
In addition, the Recommendation relies upon the post-orals, pre-negotiations ranking of the Committee, but that ranking is inconsistent with the Proposals. For example, the post-orals, pre-negotiations consensus statement of the Committee reveals that the scores were premised on Allied having a turnover rate of 28%, nearly as good G4S's turnover rate of 26%, but Allied's own Proposal reflects that its turnover rate is 38%, more than 50% worse than G4S's turnover rate. Also, the Negotiation Committee reached erroneous conclusions related to Allied's project manager's "vast experience in rail transit systems" and the status of Allied's Charlotte transit experience. Further, the post-orals ranking necessarily do not at all reflect the BAFOs submitted by both firms after oral presentations, which are what the Committee properly relied upon to determine that G4S provides the best value to the County, prior to the OIG's illegal self-insertion into the process and introduction of impermissible factors.



For the foregoing reasons, G4S respectfully requests that the Hearing Examiner find that an award of the Contract to Allied would not comply with applicable legal requirements, and that the County Commission should reject the Recommendation and instead award the Contract to G4S.

Respectfully submitted,

BILZIN SUMBERG BAENA PRICE
& AXELROD LLP
1450 Brickell Avenue, 23rd Floor
Miami, FL 33131
Phone: (305) 350-2411
Fax: (305) 351-2217

By: 

Albert E. Dotson, Jr., Esquire
adotson@bilzin.com
Florida Bar No. 724203

cc: Clerk of the Board
Robert A. Cuevas, Jr., County Attorney
AlliedBarton Security Services, LLC
50 State Security Service, Inc.,
Feick Security Corporation
Kent Security Services, Inc.,
McRoberts Protective Agency, Inc.,
Navarro Group Ltd., Inc.
P.G. Security, Inc. d/b/a Platinum Group Security, Inc.
Security Alliance, LLC
American Guard Services, Inc.
US Alliance Management Corp., d/b/a U.S. Security
Melsha Security Services Corp.
Quest Security Services Inc.
Unlimited Security

MIAMI 3951957.2 73190/10196



Attachment 2

Approved

Veto

Override


Mayor

Agenda Item No. 12(A)(1)
2-18-10

RESOLUTION NO. R-204-10

RESOLUTION APPROVING SETTLEMENT AGREEMENT
BETWEEN MIAMI-DADE COUNTY, MICHELLE TRIMBLE,
MARK VIETH, JOSEPHS JACK, P.A., AND THE
WACKENHUT CORPORATION TO RESOLVE
OUTSTANDING LITIGATION FOR MUTUAL RELEASES OF
ALL CLAIMS AND A NET PAYMENT TO THE COUNTY OF
\$3,000,000

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the settlement of the lawsuits as forth in the Settlement Agreement and authorizes the execution by the County Mayor or the Mayor's Designee of the Settlement Agreement in substantially the form attached hereto.

The foregoing resolution was offered by Commissioner Barbara J. Jordan, who moved its adoption. The motion was seconded by Commissioner Dorrin D. Rolle and upon being put to a vote, the vote was as follows:

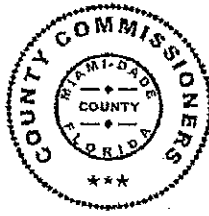
	Dennis C. Moss, Chairman	nay	
	Jose "Pepe" Diaz, Vice-Chairman	aye	
Bruno A. Barreiro	aye	Audrey M. Edmonson	aye
Carlos A. Gimenez	aye	Sally A. Heyman	absent
Barbara J. Jordan	aye	Joe A. Martinez	nay
Dorrin D. Rolle	aye	Natacha Seijas	absent
Katy Sorenson	aye	Rebeca Sosa	nay
Sen. Javier D. Souto	aye		

Resolution No. R-204-10

Agenda Item No. 12(A)(1)

Page No. 2

The Chairperson thereupon declared the resolution duly passed and adopted this 18th day of February, 2010. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.



MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: **DIANE COLLINS**

Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "OR", is written over a horizontal line.

Oren Rosenthal

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SETTLEMENT AGREEMENT

This Settlement Agreement and Mutual Release ("Agreement") dated _____, 2010, is entered by and between Michelle Trimble, Mark Vieth, Josephs Jack, P.A., The Wackenhut Corporation, a Florida corporation with FEIN 590857245 ("Wackenhut"), and Miami-Dade County a political subdivision of the State of Florida (the "County").

RECITALS

WHEREAS, Wackenhut has filed suit against the County for breach of contract and violation of their federal rights (the "Federal Claims") in a case styled *The Wackenhut Corporation v. Miami-Dade County*, Case No. 09-21147-Civ-Jordan/McAliley in the United States District Court for the Southern District of Florida ("Federal Case"); and

WHEREAS, the County has filed a Counter-Claim for breach of contract in the Federal Case; and

WHEREAS, Wackenhut has filed suit against the County for breach of contract related to the imposition of liquidated damages (the "Liquidated Damages Claim") in a case styled *The Wackenhut Corporation v. Miami-Dade County*, Case No. 09-48813 CA 40 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County ("Liquidated Damages Case"); and

WHEREAS, the County has filed a Counter-Claim for breach of contract in the Liquidated Damages Case; and

WHEREAS, Wackenhut has filed suit against the County under the Public Records Laws of the State of Florida (the "Public Records Claim") in the case styled *The Wackenhut Corporation v. Miami-Dade County*, Case No. 09-72488 CA 06 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County (the "Public Records Case"); and

WHEREAS, the County, through its Audit and Management Services Department ("AMS") conducted an audit of a contract between Miami-Dade Transit and Wackenhut (the "Audit") and issued a Final Audit Report dated April 9, 2009 (the "Final Audit Report"); and

WHEREAS, the County has initiated a debarment proceeding pursuant to Section 10-38, *et seq.*, of the Code of Miami-Dade County styled *In re: Proposed Debarment of the Wackenhut Corporation*, D-BAR 09-02. (the "Debarment"); and

WHEREAS, Wackenhut has filed suit against Mark Vieth, his law firms and Michelle Trimble in a case styled *The Wackenhut Corporation v. Tilghman & Vieth, P.A.*, Case No. 08-30498 CA 01 (the "Vieth Case"); and

WHEREAS, Michelle Trimble has filed suit against Wackenhut in a case styled *Michelle Trimble v. Wackenhut Corporation*, Case No. 05-15989 CA 27 in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County (the "Whistleblower Case"); and

WHEREAS, upon a jury verdict finding that Wackenhut did not commit a violation of any law, rule or regulation and a Final Judgment has been entered in the Whistleblower Case in favor of Wackenhut and against Michelle Trimble; and

WHEREAS, Wackenhut has an outstanding claim for fees and costs in the Whistleblower Case as the prevailing party; and

WHEREAS, a Qui Tam action has been filed pursuant to the Miami-Dade County False Claims Ordinance, Section 21-255, *et seq.*, of the Code of Miami-Dade County by the relator Michelle Trimble in a case styled *Miami-Dade County ex. rel. Trimble v. Wackenhut Corp.*, Case No. 05-15871 CA 23, in the Circuit Court of the Eleventh Judicial Circuit (the "Qui Tam Case"); and

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WHEREAS, Mark Vieth and Josephs Jack, P.A. ("Josephs Jack"), and Lauri Waldman Ross represented Trimble in the Qui Tam case; and

WHEREAS, the Parties agree that the County shall intervene in the Qui Tam Case for the purposes of entering into, seeking approval of and enforcing this Settlement Agreement as provided below; and

WHEREAS, Mark Vieth, Michelle Trimble, Josephs Jack, Wackenhut and the County desire to settle any and all claims and controversies relating to the Federal Case, the Liquidated Damages Case, the Public Records Case, the Audit, the Debarment, the Qui Tam Case, the Vieth Case and all claims for costs and fees in the Whistleblower Case;

TERMS

NOW THEREFORE, in consideration of the foregoing recitals and following premises, promises, covenants, conditions, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which is acknowledged, Mark Vieth, Josephs Jack, Michelle Trimble, Wackenhut and the County agree as follows:

1. The above recitals are incorporated by reference and are a part of this Agreement.
2. Subject to the terms and conditions of this Agreement and approval of the settlement by the Court in the Qui Tam Case, Michelle Trimble, Wackenhut and the County hereby agree to compromise and settle all claims relating to the Federal Case, the Liquidated Damages Case, the Public Records Case, the Debarment, the Qui Tam Case, the Vieth Case and all claims for costs and fees in the Whistleblower Case. It is understood that the terms of this Agreement, the payment of any moneys, or any other action taken pursuant to this Agreement in no way constitutes an admission of liability or acknowledgement of the validity of any allegation, finding, or conclusion by Wackenhut or the County, but rather are made as a

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contractual settlement and not a mere recital by way of compromise to avoid the expense and uncertainty of further litigation.

3. The parties shall file Joint Stipulations of Dismissal with Prejudice dismissing all parties' claims in the Federal Case, the Liquidated Damages Case, the Public Records Case, the Qui Tam Case, and the Vieth Case. The Joint Stipulations of Dismissal with Prejudice shall provide that each party shall bear their own attorneys' fees and costs in those cases unless otherwise provided in this Settlement Agreement.

4. The County shall file a withdrawal of the Debarment with the Department of Small Business Development terminating all debarment proceedings and withdrawing the Notice of Proposed Debarment. Upon withdrawal of the Debarment, the County may not seek debarment of Wackenhut for the acts alleged in the Notice of Proposed Debarment.

5. Wackenhut agrees to withdraw and to not further pursue any and all claims for costs and fees in the Whistleblower Case that it may or may not be entitled to as a prevailing party in that case.

6. The Joint Stipulations of Dismissal with Prejudice and withdrawal of the Debarment shall be filed within seven (7) business days after Wackenhut has paid the Settlement Funds to the Trust Account of Joseph Jack, P.A..

7. Within ten (10) business days of approval of this Settlement Agreement by the Qui Tam Case Court, the County through AMS shall issue a Supplemental Audit Report to clarify certain statements in the Final Audit Report that remove any findings of intentionality on the part of Wackenhut as set forth in Exhibit A.

8. The County deems Wackenhut an eligible and responsible vendor, contractor, bidder or responder for purposes of maintaining existing contracts or obtaining new contracts

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with the County insofar as that responsibility determination is premised solely on the matters discussed herein. Also, except as provided below in this section, the County shall not consider this Agreement, the Audit, the Final Audit Report, or the claims and controversies relating to the Federal Case, the Liquidated Damages Case, the Public Records Case, the Debarment, or the Qui Tam Case in evaluating or awarding any future County contracts or in any other matters (regulatory or otherwise) that may come before the Board of County Commissioners or in any way preclude or exclude Wackenhut from being awarded contracts by the County, whether competitively, on a sole source basis through a waiver of the competitive bid process, or otherwise, as a direct or indirect result of, or for reasons or issues related to, the Audit, this Agreement, or any and all claims and controversies relating to the Federal Case, the Liquidated Damages Case, the Public Records Case, the Debarment, the Qui Tam Case, the Vieth Case, the Whistleblower Case, or by virtue of Wackenhut having been the subject of a County Audit, investigation, entered into litigation with the County, or having had or settled any claim and controversy with the County. Notwithstanding the above, the County reserves the right to make a responsibility determination based on an arrest, indictment or conviction of a principal or employee of Wackenhut in regards to any alleged actions relating to the contracts at issue in this Agreement, the Audit, the Federal Case, the Liquidated Damages Case or the Qui Tam Case, unless such principal or employee of Wackenhut is prohibited from participating in or controlling the performance of a proposed contract with the County. The County also reserves the right to make a responsibility determination as to Wackenhut based upon the grounds set forth in Section 10-38(h)(1)(i) of the Code of Miami-Dade County.

9. Upon approval of this Settlement Agreement by the Qui Tam Case Court, the County and Wackenhut shall consider this matter closed and not seek to further civilly

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in writing by the parties.

25. As between the County and Wackenhut, the terms and conditions of this Agreement are fully set forth in this document and no other material terms exist outside this document. As between the County and Wackenhut, this Agreement supersedes all prior and contemporaneous agreements and understandings. As between Wackenhut and all other parties, the terms and conditions of this Agreement are to be read and enforced in conjunction with the terms and conditions of the settlement announced on the record in the Qui Tam Case at the January 7, 2010 hearing.

26. The parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in this Agreement and that no presumptions or inference shall apply against any party hereto to its construction.

27. The parties declare that they have completely read the terms of this Agreement, that they have discussed the terms of the Agreement with legal counsel of their choice, and that they fully understand and voluntarily accept the terms for the purpose of making a full and final compromise, adjustment and settlement of claims.

28. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, employees, officers, directors, predecessors, affiliates, successors or assigns in connection with any legal action arising out of the agreement.

29. By executing this Agreement the undersigned warrant and represent that they are authorized to enter into this Agreement and empowered to bind their respective parties to its terms. Further, the parties represent that they have not assigned their rights or claims subject of this Agreement to any third party.

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INTERNAL SERVICES DEPARTMENT
111 NW 1st Street • Suite 1300
Miami, Florida 33128 - 1974
T (305)375-5289 F (305)375-4407 (305)372-6128

miamidade.gov

November 25, 2013

All Responding Proposers (See Distribution List)

SUBJECT: RFP No. 864
Security Guard Services for Miami-Dade Transit

Dear Proposers:

Evaluation of proposals tendered in response to the above cited solicitation has been completed. The County Mayor or designee has recommended award as shown in the attached document.

This notice is provided in accordance with Section 4.9 of the solicitation and Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County. Our provision of this notice also serves to confirm the lifting of the Cone of Silence from this procurement action as dictated by Section 2-11.1(f) of the County Code.

We appreciate the participation of all proposers which responded to the subject action. If you have any questions, please contact me at 305-375-1291 or lydiaos@miamidade.gov.

Sincerely,

Lydia Osborne

Lydia Osborne
Procurement Contracting Officer

Distribution List: AlliedBarton Security Services, LLC
G4S Secure Solutions (USA), Inc.
50 State Security Service, Inc.
Feick Security Corporation
Kent Security Services, Inc.
McRoberts Protective Agency, Inc.
Navarro Group Ltd., Inc.
P.G. Security, Inc. d/b/a Platinum Group Security, Inc.
Security Alliance, LLC
American Guard Services, Inc.
US Alliance Management Corp., d/b/a U.S. Security
Melsha Security Service, Inc.
Quest Security
Unlimited Security

CLERK OF THE BOARD
2013 NOV 25 PM 3:27
CLERK OF THE BOARD

Attachment: County Mayor Award Recommendation

cc: Clerk of the Board
Bruce Libhaber, Assistant County Attorney

MIAMI-DADE
Delivering Excellence Every Day

Memorandum

MIAMI-DADE
COUNTY

Date:

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor

Subject: Recommendation for Award: Security Guard Services for Miami-Dade Transit

2013 NOV 25 PM 3:27

Recommendation

It is recommended that the Board of County Commissioners (Board) award *Contract No. RFP864, Security Guard Services for Miami-Dade Transit (MDT)* to AlliedBarton Security Services, LLC for armed security guard services at MDT's maintenance facilities, Metrorail and Metromover stations, bus yards, passenger park and ride lots/facilities, and major bus depots.

This award recommendation is presented for Citizens' Independent Transportation Trust (CITT) Committee review pursuant to Miami-Dade County Code Section 29-124(f). The Miami-Dade Transit Department (MDT) allocation within this contract recommendation may only be considered by the Board if CITT has forwarded a recommendation to the Board prior to the date scheduled for Board consideration or 45 days have elapsed since the filing with the Clerk of the Board of this contract recommendation. If CITT has not forwarded a recommendation and 45 days have not elapsed since the filing of this award recommendation, I will request a withdrawal of the MDT allocation from this item.

Scope

The impact of this item is countywide in nature.

Fiscal Impact and Funding Source

The fiscal impact for the initial four year term is \$57,000,000. If the one, four-year option to renew is exercised, the cumulative value will be \$114,000,000. The prices may be adjusted to reflect the annual Living Wage increases per Section 2-8.9 of the Code of Miami-Dade County. The existing contract is for four years and six months with a total allocation of \$72,600,000. The funding source is MDT's Operating funds, and the allocation is based on prior usage and anticipated needs over the term of the contract. MDT has confirmed that no federal funds will be used in this contract.

The following table represents the gross annual savings to the County and associated percentage changes as compared to the current annual cost under Contract No. 8724-2/11-2.

First Year's Savings When Comparing Current Pricing with Pricing of Recommended Firm			
Current Contract: 8724-2/11-2 (Incumbent Firm: 50 State Security)	Recommended Firm: AlliedBarton Security Services LLC <i>Best and Final Price</i>	First Year's Savings	Percentage Savings
\$16,643,978	\$14,298,939	\$2,345,039	14.089%

Note: Numbers are rounded to the nearest dollar.

The savings shown above are for the first year of the initial four-year term. The costs include labor and non-labor costs such as vehicles, mobile video devices, and project management. Using the estimated hours proposed in the solicitation, the annual cost under the current contract would have been \$16,643,978. The negotiated first-year cost of AlliedBarton under the new contract is \$14,298,939, which represents a savings of \$2,345,039 or a 14.09 % decrease in cost from the current contract, and a reduction in price from their original offer of \$1,686,733, a 10.55% decrease. The cumulative savings for the initial four-year term, when compared to the current contract's annual price is \$10,235,783.

Honorable Chairman Rebecca Sosa
and Members, Board of County Commissioners
Page 2

Pursuant to Resolution R-98-12, which directs the County Mayor or designee to negotiate better prices on all awarded contracts, and prior to the exercise of any options-to-renew, it is the County's intention, at the time of the option-to-renew period, or at any time during the contract term, at the County's sole discretion, to re-negotiate the firm's prices, to realize even further savings for the County.

Track Record/Monitor

The Contract Manager for MDT is Eric Muntan, Chief, Office of Safety and Security. Lydia Osborne of Internal Services Department's Procurement Management Services Division is the Procurement Contracting Officer.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise, at their discretion, contract modifications and extensions in accordance with the terms and conditions of the contract.

Vendor Recommended for Award

Awardee	Address	Principal
AlliedBarton Security Services, LLC	161 Washington Street, Suite 600 Conshohocken, PA	William C. Whitmore

Vendors Not Recommended for Award

Proposers	Reason for Not Recommending
G4S Secure Solutions (USA), Inc.	Best and Final Offer/Prices Evaluation Scores/Ranking
50 State Security Service, Inc.	
Feick Security Corporation	
Kent Security Services, Inc.	
McRoberts Protective Agency, Inc.	
Navarro Group Ltd., Inc.	
P.G. Security, Inc., d/b/a Platinum Group Security, Inc.	
Security Alliance, LLC	
American Guard Services, Inc.	Non-compliance; proposal did not meet the SBE goal. (No Schedule of Intent Affidavit with proposal)
US Alliance Management Corp., d/b/a/ U.S. Security	
Melsha Security Service, Inc.	Non-responsive, proposal did not meet submission requirements (No bid security with proposal)
Quest Security,	
Unlimited Security	

Due Diligence

Due diligence was conducted in accordance with the ISD's Procurement Guidelines to determine the contractor's responsibility, including verifying corporate status and that there are no performance or compliance issues. The lists that were referenced include: convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to Contractor responsibility. This information is being provided pursuant to Resolution R-187-12.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies and will be collected on all purchases, where permitted by funding source.
- A Small Business Enterprise (SBE) 15% subcontractor goal and Local Preference were applied in accordance with the applicable ordinances.
- The services being provided are covered under the Living Wage Ordinance.

Background

MDT has a contract in place to provide security guard service until April 24, 2014. A Request for Proposals was issued under full and open competition to establish a successor contract for these security services. Fourteen proposals were received. The County Attorney's Office determined that three of the 14 proposals (Melsha Security Service, Inc., Quest Security, and Unlimited Security) were non-responsive (see attached Evaluation/Selection Committee Chairperson's report), as the firms did not submit a bid security bond with their proposals, as required in the solicitation. Furthermore, the Small Business Development Division determined that two proposals (American Guard Services, Inc., and US Alliance Management Corp. d/b/a/ U.S. Security), were not in compliance with the Small Business Enterprise (SBE) Program's 15% Subcontractor Goal, as the firms failed to submit the Schedule of Intent Affidavit reflecting the certified SBE firms being utilized to meet the established SBE Subcontractor Goal. Accordingly, these five proposals were not evaluated by the Evaluation/Selection Committee. The remaining nine proposals were evaluated.

Following pre-oral evaluation of the nine proposals, three firms were recommended for oral presentations: AlliedBarton Security Services, LLC. (AlliedBarton), G4S Secure Solutions (USA) Inc. (G4S), and 50 State Security Service, Inc. (50 State). The firms' final post-oral presentation scores are noted below:

	Firm	Score
1	AlliedBarton Security Services, LLC	5,870
2	G4S Secure Solutions (USA), Inc.	5,760
3	50 State Security Service, Inc.	5,193

The Evaluation/Selection Committee determined that the two highest ranked firms, AlliedBarton and G4S, indicated a high prospect for outstanding performance on the resulting contract. Both firms were recommended for negotiations.

The Negotiations Team (Team) met individually with each firm on September 23, and September 24, 2013, and requested that the two submit their best and final offer (BAFO). The Team requested rate reductions from both firms through the BAFO process. The Team considered the best value for the County, and considered the firms' approach and pricing. Both firms were required to submit their BAFO to the Clerk of the Board on September 30, 2013.

Before and After BAFO Price for Term of Contract				
Proposers	Proposed Annual Price	Best and Final Offers (Year 1)	Best and Final Offers (Years 2 through 4)	Best and Final Offer (4-Year Initial Term)
AlliedBarton Security Services, LLC	\$15,985,672	\$14,298,939	\$14,013,730	\$56,340,127
G4S Secure Solutions (USA), Inc.	\$16,120,968	\$14,103,672	\$14,089,422	\$56,371,937

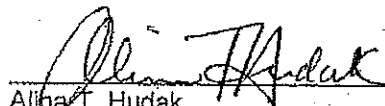
Note: Numbers are rounded to the nearest dollar.

The Team met on October 1 and October 24, 2013, to evaluate the BAFOs submitted by AlliedBarton and G4S. At the October 24, 2013 meeting, price was reviewed for the entire initial term (four years). G4S's BAFO price was \$195,267 lower than the BAFO price provided by AlliedBarton (refer to Table below) for the first year of the initial term of the contract. When price was calculated over the initial term of the contract (four years), AlliedBarton's BAFO price is \$31,810 lower than G4S's BAFO price. This results from the inclusion by each of the two firms of the cost of bicycles and mobile device units as one-time charges, that are included in the first year pricing as requested in the BAFO price form.

Comparison of Best and Final Offers			
Personnel/Unit	AlliedBarton	G4S	Comparison
Security Guard (hourly)	\$22.68	\$22.72	AlliedBarton's BAFO is \$31,810 less than G4S's BAFO over the initial term (4 years)
Supervisor (hourly)	\$26.78	\$28.21	
Dispatcher (Hourly)	\$22.55	\$24.78	
Project Manager (annually)	\$132,121.60	\$161,214.48	
Crime Analyst (annually)	\$61,547.20	\$73,100.88	
Vehicles (monthly)	\$3,366.67	\$1,864.00	
Golf Carts (monthly)	\$440.00	\$650.00	
Bicycles (one-time)	\$600.00	\$600.00	
Mobile Video Device (one-time)	\$3,722.79	\$110.00	
First Year Price	\$14,298,939	\$14,103,672	
Initial Term (4 Years)	\$56,340,127	\$56,371,937	

Note: Numbers are rounded to the nearest dollar.

The Team referred back to the post-oral scores. These scores showed that five of the seven Committee members scored AlliedBarton higher than G4S for the technical criteria. Additionally, four of the seven Committee members scored Allied Barton higher than G4S for price. Since AlliedBarton was ranked the highest by the Committee, in both technical and price, and their BAFO was lower over the initial term of the contract, the team unanimously voted that AlliedBarton should be recommended for award.


Allison T. Hudak
Deputy Mayor



MEMORANDUM

TO: LISTED DISTRIBUTION

DATE: December 5, 2013

FROM: Christopher Agrippa, Director
Clerk of the Board Division

SUBJECT: Bid Protest – RFP No. 864
Security Guard Services for
Miami-Dade Transit
Protester: 50 State Security
Service, Inc.

A handwritten signature, likely of Christopher Agrippa, is written over the printed name and title.

Pursuant to Section 2-8.4 of the Code and Implementing Order 3-21, Bid Protest Procedures, a bid protest was filed with the Clerk of the Board Division on December 2, 2013, in connection with the foregoing Contract. The protest was filed by Attorney Joseph M. Goldstein, representing 50 State Security Service, Inc.

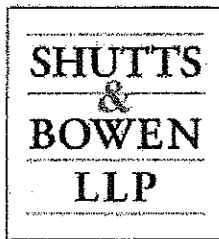
A filing fee in the amount of \$5,000.00 was submitted with the bid protest.

If you have any questions pertaining to this protest, please contact Fara C. Diaz at (305) 375-1293.

CA/fcd
Attachments

DISTRIBUTION:

Honorable Members, Board of County Commissioners (via email)
Honorable Carlos A. Gimenez, Mayor, Miami-Dade County (via email)
Alina T. Hudak, Deputy Mayor/County Manager (via email)
R.A. Cuevas, County Attorney (via email)
Hugo Benitez, Assistant County Attorney (via email)
Bruce Libhaber, Assistant County Attorney (via email)
Jenelle Snyder, County Attorney's Office (via email)
Rita Gonzalez, County Attorney's Office (via email)
Elizabeth Alfonso Ruiz, County Attorney's Office (via email)
Charles Anderson, Commission Auditor (via email)
Elizabeth Owens, BCC Legislative Analyst, Commission Auditor's Office (via email)
Lester Sofa, Director, Internal Services Department (via email)
Miriam Singer, CPPO, Assistant Director, Internal Services Dept. (via email)
Amos Roundtree, Director, Purchasing Department, Internal Services Dept. (via email)
Walter Fogarty, Manager, Procurement Vendor Services, Internal Services Dept. (via email)
Ray Baker, Assistant to the Director, Internal Services Dept. (via email)
Lydia Osborne, Procurement Contracting Officer, Internal Services Dept. (via email)



Founded 1910

JOSEPH M. GOLDSTEIN
PARTNER
(954) 847-3837 Direct Telephone
(954) 888-3066 Direct Facsimile

CLERK OF THE BOARD
2013 DEC -2 PM 12:13
MIAMI-DADE COUNTY, FLA.

E-MAIL ADDRESS:
jgoldstein@shutts.com

December 2, 2013

HAND DELIVERY

Clerk of the Board
Stephen P. Clark Center
111 Northwest 1st St., 17th Floor, Suite 202
Miami, Florida 33128-1983

**Re: 50 State Security Service, Inc.'s Bid Protest of Notice of Contract Award
Recommendation
Security Guard Services for Miami-Dade Transit RFP No. 864**

Dear Clerk of the Board:

This correspondence is transmitted to you pursuant to Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County, as amended and established in Implementing Order 3-21 and RFP 864, Section 4.10. This correspondence shall serve as our client, 50 State Security Service, Inc.'s ("50 State") Formal Bid Protest ("Protest") of the Mayor's Recommendation of Award to AlliedBarton Security Services, LLC ("AlliedBarton") with respect to Miami-Dade County RFP No. 864, Security Guard Services for Miami-Dade Transit. A true and correct copy of the Recommendation is attached as Exhibit A. 50 State's Bid Protest is being timely filed within three working days of the posting of the Recommendation and includes the \$5,000.00 filing fee.

I. Preliminary Statement and Standing

50 State has been successfully operating security services for Miami-Dade Transit since 2009. During 50 State's tenure as Miami-Dade Transit's security services provider, there has been a 43% reduction in crime for the Miami-Dade Transit system. In this Protest, 50 State will demonstrate the occurrence of several significant procedural and substantive improprieties that served to prejudicially undermine what was supposed to be a fair and effective public procurement process. For example, prior to even receiving and reviewing the proposals, a member of the Evaluation Committee made disparaging remarks regarding 50 State and the initial transition process when 50 State first began operating the security services for Miami-Dade Transit. Similarly, during the course of the review process, another Evaluation Committee

member made comments that undermined 50 State's success regarding the 43% reduction in crime. Such comments served to prejudice all Evaluation Committee members against 50 State. Moreover, such preconceived bias on the part of certain Evaluation Committee members resulted in those members giving 50 State artificially reduced technical scores.

Because a fair and effective evaluation process would have resulted in 50 State being awarded the contract, the Recommendation should be rejected as "arbitrary and capricious," entitling 50 State to recommendation for the award. 50 State, therefore, challenges the Recommendation as improper and illegal, and has standing to initiate this Protest because it would have been the highest ranked responsive and responsible proposer. *See, e.g., Intercontinental Properties, Inc. v. State Department of Health and Rehabilitative Services*, 606 So. 2d 380 (Fla. 3d DCA 1992); *Preston Carroll Co. v. Fla. Keys Aqueduct Auth.*, 400 So. 2d 524, 525 (Fla. 3d DCA 1981). *See also Statistica, Inc. v. Christopher*, 102 F.3d 1577, 1581 (Fed. Cir. 1996) (in a best-value procurement a protestor has standing where it shows that "but for the alleged error, there was a substantial chance that it would receive an award – that it was within the zone of active consideration.") (internal quotations omitted, emphasis in original).

II. Timeliness

On November 25, 2013, the County Manager issued its Recommendation of Award to AlliedBarton. *See* Exhibit A. Per Section 2-8.4(b) of the Code of Miami-Dade County, and Section II of Miami-Dade County Implementing Order 3-21, within three working days of the posting of the Recommendation of Award, 50 State filed its formal Bid Protest with the Clerk of the Board, and mailed copies (including all documents and supporting evidence) to the County Attorney and each offeror in this procurement. Therefore, this Bid Protest is timely filed.

III. Basis for Protest

A. Legal Standard

One of the fundamental principles of any American public procurement system is that offerors must be treated equally. *See, e.g., Fla. Stat. § 287.057(2)* ("[V]endors shall be afforded fair and equal treatment"); *see also Compaq Computer Corp. v. Dep't of Revenue*, DOAH No. 02-1721BID, 2002 WL 31440728, *8 (Fla. Div. Admin. Hrgs. Sept. 23, 2002) (where agency waived minor technical irregularities in some proposals, it was unlawful disparate treatment for it to reject the protestor's proposal as non-responsive for containing similar minor technical irregularities).

The Third District Court, in its seminal decision *City of Sweetwater v. Solo Constr. Corp.*, 823 So. 2d 798 (Fla. 3d DCA 2002), cogently set forth the controlling legal considerations and standards applicable to this bid protest. The Court in *Sweetwater* observed that "[t]here is a great public interest in ensuring that contracts be awarded to effectuate the intent of the competitive bid laws." *Id.* at 801 (cit. omit). Quoting from its earlier decision in *Marriott Corp.* 383 So. 2d at 665, the Court succinctly stated:

Florida's competitive bid statutes are enacted for the protection of the public. They create a system by which goods or services required by the public

authorities may be acquired at the lowest possible cost. The system confers upon both the contractor and the public authority reciprocal benefits, and confers upon them reciprocal obligations. The bidder is assured fair consideration of his offer, and is guaranteed the contract if his is the lowest and best bid received. The principal benefit to the public authority is the opportunity of purchasing the goods and services required at the best price obtainable. Under this system, the public authority may not arbitrarily or capriciously discriminate between bidders, or make the bid based upon personal preference.

Sweetwater, 823 So. 2d at 801 (applying arbitrary and capricious standard to RFPs); *see also Emerald Correctional Manag. v. Bay Co. Bd. Of Co. Commsrs.*, 955 So. 2d 647, 652-53 (Fla. 1st DCA 2007). Unequal treatment violates the "fundamental principle [that a] contracting agency must treat all offerors equally[.]" *CRAssociates, Inc.*, B-282075.3, 2000 WL 365909, at *4 (Comp. Gen. Mar. 15, 2000). This "fundamental principle" is critical to an American procurement process because "uneven treatment goes against the standard of equality and fair-play that is a necessary underpinning of the [sic] process and amounts to an abuse of [an] agency's discretion." *J.C.N. Constr., Inc. v. U.S.*, 107 Fed. Cl. 503, 513 (2012) (citing *PGBA, LLC v. U.S.*, 60 Fed. Cl. 196, 207 (2004), *aff'd*, 389 F.3d 1219 (Fed. Cir. 2004)); *see also Finlen Complex, Inc.*, B-288280, 2001 WL 1198650, at *8 (Comp. Gen. Oct. 10, 2001) ("basic principles of fair play are a touchstone of the [...] procurement system, and those principles bound even broad grants of agency discretion").

In short, "[w]hile a public authority has wide discretion in award of contracts for public works on competitive bids, such discretion must be exercised based upon clearly defined criteria and may not be exercised arbitrarily or capriciously." *Sweetwater*, 823 So. 2d at 802. (emphasis added). In this context, "arbitrary and capricious" includes the failure by the public body to base its determination "on facts reasonably tending to support the conclusions reached by such [public body]." *Miami-Dade County v. Church & Tower, Inc.*, 715 So. 2d 1084, 1088 (Fla. 3d DCA 1998) (citing *Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc.*, 354 So. 2d 446, 450 (Fla. 1st DCA 1978) (quoting *City of Pensacola v. Kirby*, 47 So. 2d 533, 535-36 (Fla. 1950))).

In other words, there must be a direct rational basis for the conclusion reached. As demonstrated herein, 50 State respectfully submits that such a basis was clearly lacking in this instance.

B. Summary Statement of Disqualifying Conduct

RFP No. 864 Security Guard Services for Miami Dade Transit (the "RFP") was issued by Miami-Dade County through the Internal Services Department, Procurement for Management Division for Miami-Dade Transit Department ("MDT") on May 8, 2013. A true and correct copy of the RFP with Amendments is attached as Exhibit B. The RFP requested proposals from qualified security guard firms to provide armed security guard services in a manner that ensures the highest level of security throughout MDT's maintenance facilities, Metrorail and Metromover stations, bus yards, passenger park and ride lots/facilities, and major bus depots. The initial term of the Contract being awarded is for four years, with one additional four-year option to renew, at the County's sole discretion.

December 2, 2013

At the June 18, 2013, Kickoff Meeting, the Procurement Contracting Officer (the "CO") explained to the Evaluation Committee that the scoring of each proposal must be done independently. Specifically, she stated that "[t]he most important thing here is – I know some of you work together, some of you know each other, may work on other projects, but you will do your evaluation independently. You cannot sit and discuss and go over your notes with the other evaluation members – you have to review the solicitation and the addenda and make your evaluation on your own." (Tape of June 18, 2013 Kickoff Meeting, Part I, at 16:53) (emphasis added). In other words, members of the Evaluation Committee were instructed to not influence each other in any way.

On the very next day, June 19, 2013, a second Kickoff Meeting was held. During this Kickoff Meeting, Horace Graham spoke and improperly offered his opinion regarding 50 State's performance over the last three years as the incumbent for the security guard services for MDT. Mr. Graham made comments, such as: "When one of the companies that, well, this company that took over now, they underestimated the services of that rail contract, and it caused a lot of problems in the beginning. And it has taken them until this time – three years for them to really fully grasp what a rail contract is – they've done shopping centers and condominiums, they've done court services, but there is nothing like the rail. We want to make sure they are held accountable for the things that they have in there." (Tape of June 19, 2013, Kickoff Meeting, Part II, at 9:28). Mr. Graham's comments not only prejudiced all of the Evaluation Committee members against 50 State, they also violated the very clear directive given by the CO that each person was required to evaluate the proposals independently and was prohibited from discussing the proposals with other Evaluation Committee members. Accordingly, his comments rendered this procurement process both procedurally and substantially defective at the outset.

Moreover, during a discussion held after 50 State's oral presentation to Evaluation Committee members, Eric Muntan, another member of the Evaluation Committee undermined 50 State's roles in the 43% reduction in crime that has taken place since 50 State began operating its security guard services for MDT in 2009. Although Eric Muntan acknowledged that the 43% reduction in crime was the accurate and reported statistic, he commented that that he was not willing to say that such crime reduction was attributable to 50 State. The continued commentary by Evaluation Committee members – which were either negative or served to undermine 50 State's proposal – resulted in a biased procurement process. This bias is reflected in the scoring of 50 State – especially the scores of the two Evaluation Committee members who made such comments.

Finally, despite the fact that 50 State submitted the lowest pricing in its proposal, represented the best value to Miami-Dade County, and was ranked as one of top three proposers, 50 State was not invited to negotiations. The failure to include 50 State in negotiations is arbitrary and capricious – especially here where, upon information and belief, comments were made that 50 State's low pricing was not credible but, after negotiations, the other two proposers decreased their prices substantially, which resulted in the new prices nearly matching, and in some cases, being lower than 50 State's proposed prices.

C. Legal Argument

1. The Evaluation Committee's Scoring Lacked The Necessary Rational Basis and Was Arbitrary and Capricious as a Matter of Law

"While a public authority has wide discretion in award of contracts for public works on competitive bids, such discretion must be exercised based upon clearly defined criteria, and may not be exercised arbitrarily or capriciously." *Sweetwater*, 823 So. 2d at 802. (emphasis added). In this context, "arbitrary and capricious" includes the failure by the public body to base its determination "on facts reasonably tending to support the conclusions reached by such [public body]." *Miami-Dade County v. Church & Tower, Inc.*, 715 So. 2d 1084, 1088 (Fla. 3d DCA 1998) (citing *Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc.*, 354 So.2d 446, 450 (Fla. 1st DCA 1978) (quoting *City of Pensacola v. Kirby*, 47 So. 2d 533, 535-36 (Fla. 1950)). By employing the competitive bid process in way that fails to consider each bidder's proposal through an even-handed application of established criteria, the public entity engages in impermissible -favoritism as a matter of law. See *Florida Dep't of the Lottery v. Gtech Corp.*, 816 So. 2d 642, 652-53 (Fla. 1st DCA 2001); *Emerald Correctional Mgt.*, 955 So. 2d at 653.

A. *The Entire Process was Tainted by Preliminary Disparaging Comments Made Prior to the Evaluation Committee's Receipt and Independent Review of the Proposals*

At the June 19, 2013, "Kick-Off Meeting" held prior to the Evaluation Committee receiving or reviewing the proposals, in response to the CO's request that the Evaluation Committee be advised regarding what Miami-Dade County is expecting in the proposals and what the Evaluation Committee should be looking for, Horace Graham addressed the Evaluation Committee and stated:

"[You are] looking for one who can provide us with the best services. You will probably [see] in your reading, some will have these outlandish things that they can provide, that will better assist us in the rail and help our patrons. But we are expecting a company that has manpower, the ability to contract before, and provided these types of services and that will be more than capable of doing these things for the rail.

When one of the companies that, well, this company that took over now, they underestimated the services of that rail contract and it caused a lot of problems in the beginning. And it has taken them until this time, three years for them to really fully grasp what a rail contract is - they've done shopping centers and condominiums, they've done court services, but there is nothing like the rail. We want to make sure they are held accountable for the things that they have in there. We also have a - there's a technology part in there that's not going really to be graded that much until we -- that's one of the options that probably Lydia will go over with you -- will not be graded until the person is issued the contract. We expect them to have the manpower and they can perform the service -- really, the big thing is if they have experience in doing this before. Some people jump out there and think it's fun and games, but it's not. And you waste all your

manpower – it took us almost 2 months, maybe 3 months, before these guys, and this is every night – we were out every night – opening in the morning at 4:30, we rest and we come back at night and then we go ‘til 1:00, and we show them all the intricacies of this rail operation. We are looking for a company that can really hit the ground running and they really have the manpower. And that’s one of the biggest things that we will have that we will encounter. Trying to find some company that can do it. And you find in all these in there that say ‘yes we can’, but they have these big outlandish proposals – how much they charge an hour. Some of them may get it confused – they think it’s an ITB, but it’s not an ITB – it’s not an invitation to bid. It’s not going to the lowest bidder, it’s going to the one to provide the best contract – the best manpower even if it not the best money – it might be the less money – but if they have the less money idea in their head then that’s probably not what we expect. We want the money to be equal to the service that they can provide for us.”

(Tape of June 19, 2013, Kickoff Meeting, Part II, at 9:28). (Emphasis added).

These statements competitively prejudiced 50 State and the entire evaluation process by negatively coloring the Evaluation Committee’s opinion of 50 State. Moreover, such statements were a violation of the scoring process and procedure for this RFP. Specifically, each Evaluation Committee member was required to score the technical portion of each proposal independently and without conferring with anyone else. Mr. Graham’s preliminary statements violated this procedural aspect of the process as it indicated that, in Mr. Graham’s, opinion, 50 State’s technical scores should be low because of his perception of 50 State’s past performance. See *Compaq*, DOAH No. 02-1721BID, 2002 WL 31440728, *8 (offerors must be treated equally); see also, *J.C.N.*, 107 Fed. Cl. at 513.

In addition to being improper and competitively prejudicial, Mr. Graham’s oral comments are completely at odds with the written review he gave of 50 State’s performance of its current contract with MDT in its Performance Evaluation Survey (“PES”):

No.	Criteria	Unit	Score
1	Experience and Qualifications of the Security Guards	1-10	10
2	Professionalism and Leadership Ability of Supervisors and Project Manager	1-10	10
3	Responsiveness to Requests for Services and/or Support Provided During Special Events	1-10	10
4	Level of Satisfaction with Customer Service	1-10	10
5	Company’s Support it’s Employees and Training Offered	1-10	10
6	Overall Satisfaction Based on Performance (Comfort Level in Hiring Vendor Again)	1-10	10

A true and correct copy of the PES is attached hereto as Exhibit C. Notably, the instructions for the PES specifically state that a score of “10 means you are very satisfied and have no questions about hiring them again.” (emphasis added). Mr. Graham’s PES was not limited to 2012 as it is dated “10/09-Present.” Additionally, in the Overall Comments section of

December 2, 2013

the PES, Mr. Graham wrote "very professional management and responsiveness to all requests." Here, there is written evidence that Mr. Graham could not have been more satisfied with 50 State's performance at MDT throughout the life of the contract; yet, for some reason, he derided 50 State's exemplary performance to the other evaluators without any explanation for his one-eighty degree change in position. The dichotomy between (a) Mr. Graham's prior review of 50 State's past performance and (b) his comments to the Evaluation Committee coupled with the scores he awarded to 50 State illustrate that his technical and price scoring of 50 State was arbitrary and capricious.

Furthermore, to the extent that 50 State may have had some trouble phasing-in at the beginning of its current contract, it was through no fault of 50 State, but due to lack of cooperation from MDT staff. Prior to the official commencement of the current contract, 50 State's management asked MDT for permission to shadow the then-incumbent contractor so that it could be up to speed when it took over. However, MDT refused to grant access to 50 State personnel, thereby denying 50 State an opportunity to smoothly transition in. It is nonsensical that MDT refused to allow 50 State onto the premises prior to day one of 50 State's effective contract so that 50 State could see the inner-workings of the transit system and prepare a seamless transition process and then chastised 50 State for the time it allegedly took to get up to speed on the "intricacies of this rail operation." In other words, it is arbitrary and capricious for MDT to prevent 50 State from taking steps to make an expedient and smooth transition and then complain that 50 State failed to make an expedient and smooth transition.

While AlliedBarton and G4S Secure Solutions (USA), Inc. ("G4S") were evaluated solely on the strength of their proposals and oral presentations, the evaluation of 50 State's proposal was tainted by Mr. Graham's comments, which reflect a personal preference to not award a contract to 50 State. As such, the technical scoring of 50 State by all Evaluation Committee members was competitively prejudiced against 50 State by virtue of Mr. Graham's preliminary and improper comments.

B. 50 State Represents the Best Value to Miami-Dade County

This was a best-value procurement, not a lowest priced technically acceptable procurement. See the RFP (as Amended) at § 4.9 ("The Contract award, if any, shall be made to the Proposer whose proposal shall be deemed to be in the best interest of the County.") Thus, assuming all offerors are found to be responsive and responsible, a more expensive, technically superior proposal could receive a contract if the County reasonably determined that the technical superiority was worth paying a price premium. Conversely, a less expensive, lower-ranked technical proposal could win if the cost savings outweighed the benefits of a more expensive and more highly ranked proposal.¹ In the CO's own words: "This is not the lowest price gets the highest points. Evaluation is – is the price worth the service offered? You have to subjectively determine if the service is worth the price. Also keep in mind that the price is negotiable. This is for value and service." (Tape of June 19, 2013, Kickoff Meeting, Part II).

¹ By contrast, public entities like the County must always award to a higher-ranked offeror with a lower price, and may never award a contract to a lower-ranked offeror with a higher price.

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Upon the submission of bids, the initial annual prices proposed for the base period, and the price scores were:

	50 State	AlliedBarton	G4S
Initial Year Price ²	\$14,312,273.94	\$15,985,730.87	\$16,120,967.91
Year 2 Price	\$14,021,273.94	\$15,498,021.62	\$16,106,717.91
Year 3 Price	\$14,021,273.94	\$15,498,021.62	\$16,106,717.91
Year 4 Price	\$14,021,273.94	\$15,498,021.62	\$16,106,717.91
Total Base Price	\$56,376,095.76	\$62,479,795.73	\$64,441,121.64
Average Annual Price	\$14,094,023.94	\$15,619,948.93	\$16,110,280.41
Scores for Initial Prices	1,760	1,980	1,945

50 State's total initial base price was \$6,103,699.97 less than AlliedBarton's. Per year, 50 State's proposal was \$1,525,924.99 less than AlliedBarton's. Despite the fact that 50 State's prices were significantly less than AlliedBarton's (AlliedBarton's prices were approximately 10.82% higher) the Evaluation Committee scored 50 State's price 220 points lower than AlliedBarton (i.e., AlliedBarton's higher price was scored 12.5% better). Similarly, 50 State's total initial base price was \$8,065,025.88 less than G4S's. Per year, 50 State's prices were \$2,016,256.47 less than G4S's. Once again, even though G4S's prices were approximately 14.31% higher than 50 State's, the Evaluation Committee scored 50 State's price 185 points less than G4S's (i.e., G4S's higher price was scored 10.51% better). In other words, the Evaluation Committee gave the lowest-priced offeror in the competitive range the worst price score. Such scoring of price is arbitrary and capricious.

C. MDT's Failure to Negotiate with 50 State Constitutes Impermissible Unequal Treatment of Offerors

Section 4.8 of the RFP provides that, "[i]n his sole discretion, the County Mayor or designee may direct negotiations with the highest ranked Proposer, negotiations with multiple Proposers, or may request best and final offers." Here, the exclusion of 50 State from negotiations, and precluding 50 State from submitting a best and final offer ("BAFO"), constitutes the impermissible unequal treatment of offerors. *Archura LLC v. U.S.*, 112 Fed. Cl. 487, 498 (2013) (unequal treatment of offers is a "quintessential example of conduct which lacks a rational basis"). But for this discriminatory treatment, 50 State would have won the award.

50 State's initial prices were clearly lower (i.e., better) than AlliedBarton's and G4S's, yet the Evaluation Committee opted to give 50 State the worst price score. The Evaluation Committee then undermined the competitive nature of the procurement by precluding 50 State from submitting a BAFO, which would have increased its overall value to MDT. A comparison of the BAFO plainly show that MDT was essentially allowing AlliedBarton and G4S to adopt 50 State's pricing without having to really compete with anyone in terms of pricing.

² A breakdown of initial prices by contract line item is available at Exhibit D.

December 2, 2013

	50 State (Initial)	AlliedBarton (BAFO)	G4S (BAFO)
Initial Year Price ³	\$14,312,273.94	\$14,298,938.80	\$14,103,671.71
Year 2 Price	\$14,021,273.94	\$14,013,729.55	\$14,089,421.71
Year 3 Price	\$14,021,273.94	\$14,013,729.55	\$14,089,421.71
Year 4 Price	\$14,021,273.94	\$14,013,729.55	\$14,089,421.71
Total Base Price	\$56,376,095.76	\$56,340,127.45	\$56,371,936.84
Average Annual Price	\$14,094,023.94	\$14,085,031.86	\$14,092,984.21

Prior to the opening of prices, AlliedBarton and G4S were millions of dollars higher than 50 State – and they were over a million dollars apart from each other. After being allowed to view 50 State's prices – *and when they knew they did not have to compete with 50 State* – they both came down to less than \$40,000 under 50 State's pricing, and were within roughly \$30,000 of each other. Put simply, the Evaluation Committee allowed them to take 50 State's initial pricing without having to worry that 50 State might submit an even lower offer.⁴

Moreover, upon information and belief, certain Evaluation Committee members were advised outside of the recorded meeting sessions that 50 State's low prices were not credible because they were too low. It was arbitrary and capricious for the Evaluation Committee to question the realism of 50 State's proposed prices, and then essential the same prices from the remaining two offerors.

This procurement is for a firm-fixed price ("FFP") contract. See the RFP (as Amended) at Article 8 ("Prices shall remain firm and fixed for the term of the Contract"), at p. 90 of 128. An FFP is a contract that places maximum risk and full responsibility on the contractor for all costs and resulting profit or loss and provides the maximum incentive for the contractor to control costs and perform effectively. See, e.g., RALPH C. NASH, JR., ET AL., *The Government Contracts Reference Book: A Comprehensive Guide to the Language of Procurement*, 269-270 (3d ed. 2007). Under a solicitation for an FFP, such as here, there is no prohibition against the procuring agency's acceptance of a low or below-cost offer. See, e.g., *Univ. Radiotherapy Assocs., P.S.C.*, B-408246, 2013 CPD ¶ 193, 2013 WL 4047322, at *3 (Comp. Gen. Aug. 9, 2013) (denying protest that awardee's proposal in an FFP procurement should have been rejected as too low because it "well below market"). In a FFP procurement, if an agency intends to evaluate offers for price realism, an agency should so advise offerors in the solicitation, and should only do so for limited purposes. See, e.g., *Networking & Eng'g Technologies, Inc.*, B-405062.6, 2013 CPD ¶ 219, 2013 WL 4828921, at *5 (Comp. Gen. Sep. 4, 2013) (in a procurement for an FFP contract "an agency may provide for price realism analysis in the solicitation for such purposes as measuring an offeror's understanding of the solicitation requirements, or to avoid the risk of poor performance from a contractor who is forced to provide services at little or no profit"). Here, MDT advised offerors that prices would be evaluated to see if offerors understand the solicitation requirements. See the RFP (as Amended), at §4.6, at pp.

³ A breakdown of BAFO prices (and 50 State's initial price) by contract line item is available at Exhibit E.

⁴ The logical and natural result of the Evaluation Committee's decision to exclude 50 State from negotiations was an artificial inflation of AlliedBarton's and G4S's BAFO prices.

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83-84 of 128. As demonstrated by its stellar PES, 50 State knows how to fully perform all of the contract requirements in an exemplary manner; therefore, to question the soundness of 50 State's proposal is arbitrary and capricious.

Secondly, the fact that the realism of only 50 State's prices was questioned and then prevented from presenting a BAFO is further evidence that MDT is disparately treating 50 State, and taking the competition out of the procurement. 50 State's exemplary PES clearly shows that it understands MDT's needs as described in the RFP and can successfully perform the RFP's contract requirements. There is nothing in the record that would indicate otherwise. *KPMG LLP*, B-406409.4, 2012 CPD ¶ 175, 2012 WL 2020396, at *9-10 (Comp. Gen. May 21, 2012) (price realism evaluations should be documented); *Sci. Apps. Int'l Corp.*, B-407105.2 2012 CPD ¶ 310, 2012 WL 5521341, at * (Comp. Gen. Nov. 1, 2012) (FFP price realism evaluations should be supported by adequate documentation). If there was no documented, rational reason to believe that 50 State does not understand MDT's needs or how to successfully perform the RFP's requirements, how could the Evaluation Committee give 50 State's lower price a worse score? It could not have – unless it was evaluating 50 State according to different, harsher standards than it was applying to AlliedBarton and G4S. *Archura*, 112 Fed. Cl. at 498 (unequal treatment of offers is a "quintessential example of conduct which lacks a rational basis").

Furthermore, as shown above, once they were invited to negotiate (i.e., after 50 State's initial price proposal was opened), both AlliedBarton and G4S decreased their prices substantially, underbidding 50 State's initial prices by the narrowest of margins. It is irrational, and a violation of the fundamental principle of equal treatment to penalize 50 State for prices that were "too low" while accepting without question the even lower prices of AlliedBarton and G4S, which they only offered after viewing 50 State's. Such unequal treatment of offerors is not permitted. *Compaq*, at *8; *J.C.N. Constr.*, 107 Fed. Cl. at 513. But for this unequal treatment, 50 State would have won the award.

D. Unsubstantiated Comments and Unequal Evaluation Criteria

In its proposal, 50 State stated that, since it began the security services for Miami-Dade Transit, the crime rate has been reduced by 43% (from 2009) and that this crime reduction was accomplished when, over this same period of time, there was a 10% increase of ridership and the total expenditure was over \$10 million less than the original funding level for the current contract. Despite the fact that 50 State set forth documentation of this crime reduction (Proposal at pp. 92-94), in the post-oral evaluation, Eric Muntan commented that this crime reduction was not necessarily attributable to 50 State. Ironically, during Mr. Muntan's statements, he substantiated that the official statics reported reflected a 43% drop in crime from when 50 State began the security guard services for Miami-Dade Transit. Specifically, Mr. Muntan stated:

Lastly when they quoted 43% reduction in crime and then they kept saying that this is coming from the police side . . . well, what we did, um, and I can speak from my experience in DOD as the commander lieutenant, we implemented [unintelligible] with the security company, and we began to capture our, um, part one crimes. And, we would keep our tallies based on what our officers reported, and they would keep theirs. There were somethings that

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were reported to them that never made it to the police; so, the although the numbers sometimes reflect higher, our official numbers which went to Dade County stats, or reported to the FBI, reflected a 43% decrease over the time that they were there. Now, that's not to say it's just because of the security guards, I mean, countywide, at the time, we were seeing drops in other part one crime. So, I mean, I'm not going to say that it wasn't their – you know their security service, but I'm not going to say it was strictly their security service that led to it. Although they did participate in monthly meetings – they brought in their analyst their major . . . , and they do information sharing – you know, look out for trends and BOLOs, you know, as far as the information sharing that would help combat some of the crime. So, I mean, I would say that [unintelligible] fairly accurate.

Post-Orals After Presentations, RFP 864 Security Guard Svcs. MDT, Evaluation 8-6-13, at 20:53.

Despite the validity of the 43% reduction in crime statistic, the entire tenor of Mr. Muntan's statements was to undermine 50 State's contribution to that reduction. Clearly, Mr. Muntan would personally prefer if 50 State does not win an award. *Marriott Corp.* 383 So. 2d at 665.

Throughout the procurement, certain members of the Evaluation Committee campaigned to impose their personal views on their colleagues and prevent 50 State from winning, leading to unequal evaluations. But for the continuous, unsubstantiated, and negative commentary by certain Evaluation Committee members – from the Kickoff Meeting through the post oral evaluations – regarding 50 State's past performance, and the other actions taken against it, 50 State would have won the award.

IV. Request for Relief

For all the foregoing reasons, we request a finding that the Recommendation and underlying conduct of the Evaluation Committee in scoring AlliedBarton and G4S higher than 50 State, excluding 50 State from negotiations, and recommending AlliedBarton rather than 50 State for award was arbitrary and capricious and contrary to competition, and that 50 State should receive the Recommendation. In the alternative, all proposals should be rejected and a new solicitation should be reissued because the procurement itself was fundamentally (i.e., terminally) flawed throughout the entire process, or Miami-Dade Transit should re-open evaluations, negotiations should be re-opened and 50 State should be invited to negotiate. Moreover, pursuant to Implementing Order 3-21, 50 State specifically reserves the right to supplement this Protest based upon records obtained through Public Record Act Requests.

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Sincerely,

Joseph M. Salomon

cc: Bruce Libhaber, Assistant County Attorney;
AlliedBarton Security Services, LLC;
G4 Secure Solutions (USA), Inc.;
Feick Security Corporation;
Kent Security Services, Inc.;
McRoberts Protective Agency, Inc.;
Navarro Group Ltd., Inc.;
P.G. Security, Inc. d/b/a Platinum Group Security, Inc.
Security Alliance, LLC;
American Guard Services, Inc.;
US Alliance Management Corp. d/b/a U.S. Security;
Melsha Security Service, Inc.;
Quest Security;
Unlimited Security



INTERNAL SERVICES DEPARTMENT
111 NW 1st Street • Suite 1300
Miami, Florida 33128 - 1974
T (305)375-5289 F (305)375-4407 (305)372-6128

miamidade.gov

November 25, 2013

All Responding Proposers (See Distribution List)

SUBJECT: RFP No. 864
Security Guard Services for Miami-Dade Transit

Dear Proposers:

Evaluation of proposals tendered in response to the above cited solicitation has been completed. The County Mayor or designee has recommended award as shown in the attached document.

This notice is provided in accordance with Section 4.9 of the solicitation and Sections 2-8.3 and 2-8.4 of the Code of Miami-Dade County. Our provision of this notice also serves to confirm the lifting of the Cone of Silence from this procurement action as dictated by Section 2-11.1(t) of the County Code.

We appreciate the participation of all proposers which responded to the subject action. If you have any questions, please contact me at 305-375-1291 or lydiaos@miamidade.gov.

Sincerely,

Lydia Osborne

Lydia Osborne
Procurement Contracting Officer

Distribution List: AlliedBarton Security Services, LLC
G4S Secure Solutions (USA), Inc.
50 State Security Service, Inc.
Feick Security Corporation
Kent Security Services, Inc.
McRoberts Protective Agency, Inc.
Navarro Group Ltd., Inc.
P.G. Security, Inc. d/b/a Platinum Group Security, Inc.
Security Alliance, LLC
American Guard Services, Inc.
US Alliance Management Corp., d/b/a U.S. Security
Melsha Security Service, Inc.
Quest Security
Unlimited Security

CLERK OF THE BOARD
2013 NOV 25 PM 3:27

Attachment: County Mayor Award Recommendation

cc: Clerk of the Board
Bruce Libhaber, Assistant County Attorney

MIAMI-DADE
Delivering Excellence Every Day

JS

Memorandum



Date:
To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners
From: Carlos A. Gimenez
Mayor
Subject: Recommendation for Award: Security Guard Services for Miami-Dade Transit

Recommendation

It is recommended that the Board of County Commissioners (Board) award *Contract No. RFP864, Security Guard Services for Miami-Dade Transit (MDT)* to AlliedBarton Security Services, LLC for armed security guard services at MDT's maintenance facilities, Metrorail and Metromover stations, bus yards, passenger park and ride lots/facilities, and major bus depots.

This award recommendation is presented for Citizens' Independent Transportation Trust (CITT) Committee review pursuant to Miami-Dade County Code Section 29-124(f). The Miami-Dade Transit Department (MDT) allocation within this contract recommendation may only be considered by the Board if CITT has forwarded a recommendation to the Board prior to the date scheduled for Board consideration or 45 days have elapsed since the filing with the Clerk of the Board of this contract recommendation. If CITT has not forwarded a recommendation and 45 days have not elapsed since the filing of this award recommendation, I will request a withdrawal of the MDT allocation from this item.

Scope

The impact of this item is countywide in nature.

Fiscal Impact and Funding Source

The fiscal impact for the initial four year term is \$57,000,000. If the one, four-year option to renew is exercised, the cumulative value will be \$114,000,000. The prices may be adjusted to reflect the annual Living Wage increases per Section 2-8.9 of the Code of Miami-Dade County. The existing contract is for four years and six months with a total allocation of \$72,600,000. The funding source is MDT's Operating funds, and the allocation is based on prior usage and anticipated needs over the term of the contract. MDT has confirmed that no federal funds will be used in this contract.

The following table represents the gross annual savings to the County and associated percentage changes as compared to the current annual cost under Contract No. 8724-2/11-2.

First Year's Savings When Comparing Current Pricing with Pricing of Recommended Firm			
Current Contract: 8724-2/11-2 (Incumbent Firm: 50 State Security)	Recommended Firm: AlliedBarton Security Services LLC <i>Best and Final Price</i>	First Year's Savings	Percentage Savings
\$16,643,978	\$14,298,939	\$2,345,039	14.089%

Note: Numbers are rounded to the nearest dollar.

The savings shown above are for the first year of the initial four-year term. The costs include labor and non-labor costs such as vehicles, mobile video devices, and project management. Using the estimated hours proposed in the solicitation, the annual cost under the current contract would have been \$16,643,978. The negotiated first-year cost of AlliedBarton under the new contract is \$14,298,939, which represents a savings of \$2,345,039 or a 14.09 % decrease in cost from the current contract, and a reduction in price from their original offer of \$1,686,733, a 10.55% decrease. The cumulative savings for the initial four-year term, when compared to the current contract's annual price is \$10,235,783.

Pursuant to Resolution R-98-12, which directs the County Mayor or designee to negotiate better prices on all awarded contracts, and prior to the exercise of any options-to-renew, it is the County's intention, at the time of the option-to-renew period, or at any time during the contract term, at the County's sole discretion, to re-negotiate the firm's prices, to realize even further savings for the County.

Track Record/Monitor

The Contract Manager for MDT is Eric Muntan, Chief, Office of Safety and Security. Lydia Osborne of Internal Services Department's Procurement Management Services Division is the Procurement Contracting Officer.

Delegated Authority

If this item is approved, the County Mayor or County Mayor's designee will have the authority to exercise, at their discretion, contract modifications and extensions in accordance with the terms and conditions of the contract.

Vendor Recommended for Award

Awardee	Address	Principal
AlliedBarton Security Services, LLC	161 Washington Street, Suite 600 Conshohocken, PA	William C. Whitmore

Vendors Not Recommended for Award

Proposers	Reason for Not Recommending
G4S Secure Solutions (USA), Inc.	Best and Final Offer/Prices
50 State Security Service, Inc.	Evaluation Scores/Ranking
Feick Security Corporation	
Kent Security Services, Inc.	
McRoberts Protective Agency, Inc.	
Navarro Group Ltd., Inc.	
P.G. Security, Inc., d/b/a Platinum Group Security, Inc.	
Security Alliance, LLC	Non-compliance; proposal did not meet the SBE goal. (No Schedule of Intent Affidavit with proposal)
American Guard Services, Inc.	
US Alliance Management Corp., d/b/a/ U.S. Security	Non-responsive, proposal did not meet submission requirements (No bid security with proposal)
Melsha Security Service, Inc.	
Quest Security,	
Unlimited Security	

Due Diligence

Due diligence was conducted in accordance with the ISD's Procurement Guidelines to determine the contractor's responsibility, including verifying corporate status and that there are no performance or compliance issues. The lists that were referenced include: convicted vendors, debarred vendors, delinquent contractors, suspended vendors, and federal excluded parties. There were no adverse findings relating to Contractor responsibility. This information is being provided pursuant to Resolution R-187-12.

Applicable Ordinances and Contract Measures

- The two percent User Access Program provision applies and will be collected on all purchases, where permitted by funding source.
- A Small Business Enterprise (SBE) 15% subcontractor goal and Local Preference were applied in accordance with the applicable ordinances.
- The services being provided are covered under the Living Wage Ordinance.

Background

MDT has a contract in place to provide security guard service until April 24, 2014. A Request for Proposals was issued under full and open competition to establish a successor contract for these security services. Fourteen proposals were received. The County Attorney's Office determined that three of the 14 proposals (Melsha Security Service, Inc., Quest Security, and Unlimited Security) were non-responsive (see attached Evaluation/Selection Committee Chairperson's report), as the firms did not submit a bid security bond with their proposals, as required in the solicitation. Furthermore, the Small Business Development Division determined that two proposals (American Guard Services, Inc., and US Alliance Management Corp. d/b/a/ U.S. Security), were not in compliance with the Small Business Enterprise (SBE) Program's 15% Subcontractor Goal, as the firms failed to submit the Schedule of Intent Affidavit reflecting the certified SBE firms being utilized to meet the established SBE Subcontractor Goal. Accordingly, these five proposals were not evaluated by the Evaluation/Selection Committee. The remaining nine proposals were evaluated.

Following pre-oral evaluation of the nine proposals, three firms were recommended for oral presentations: AlliedBarton Security Services, LLC. (AlliedBarton), G4S Secure Solutions (USA) Inc. (G4S), and 50 State Security Service, Inc. (50 State). The firms' final post-oral presentation scores are noted below:

	Firm	Score
1	AlliedBarton Security Services, LLC	5,870
2	G4S Secure Solutions (USA), Inc.	5,760
3	50 State Security Service, Inc.	5,193

The Evaluation/Selection Committee determined that the two highest ranked firms, AlliedBarton and G4S, indicated a high prospect for outstanding performance on the resulting contract. Both firms were recommended for negotiations.

The Negotiations Team (Team) met individually with each firm on September 23, and September 24, 2013, and requested that the two submit their best and final offer (BAFO). The Team requested rate reductions from both firms through the BAFO process. The Team considered the best value for the County, and considered the firms' approach and pricing. Both firms were required to submit their BAFO to the Clerk of the Board on September 30, 2013.

Before and After BAFO Price for Term of Contract				
Proposers	Proposed Annual Price	Best and Final Offers (Year 1)	Best and Final Offers (Years 2 through 4)	Best and Final Offer (4-Year Initial Term)
AlliedBarton Security Services, LLC	\$15,985,672	\$14,298,939	\$14,013,730	\$56,340,127
G4S Secure Solutions (USA), Inc.	\$16,120,968	\$14,103,672	\$14,089,422	\$56,371,937

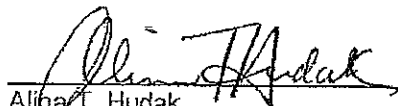
Note: Numbers are rounded to the nearest dollar.

The Team met on October 1 and October 24, 2013, to evaluate the BAFOs submitted by AlliedBarton and G4S. At the October 24, 2013 meeting, price was reviewed for the entire initial term (four years). G4S's BAFO price was \$195,267 lower than the BAFO price provided by AlliedBarton (refer to Table below) for the first year of the initial term of the contract. When price was calculated over the initial term of the contract (four years), AlliedBarton's BAFO price is \$31,810 lower than G4S's BAFO price. This results from the inclusion by each of the two firms of the cost of bicycles and mobile device units as one-time charges, that are included in the first year pricing as requested in the BAFO price form.

Comparison of Best and Final Offers			
Personnel/Unit	AlliedBarton	G4S	Comparison
Security Guard (hourly)	\$22.68	\$22.72	AlliedBarton's BAFO is \$31,810 less than G4S's BAFO over the initial term (4 years)
Supervisor (hourly)	\$26.78	\$28.21	
Dispatcher (Hourly)	\$22.55	\$24.78	
Project Manager (annually)	\$132,121.60	\$161,214.48	
Crime Analyst (annually)	\$61,547.20	\$73,100.88	
Vehicles (monthly)	\$3,366.67	\$1,864.00	
Golf Carts (monthly)	\$440.00	\$650.00	
Bicycles (one-time)	\$600.00	\$600.00	
Mobile Video Device (one-time)	\$3,722.79	\$110.00	
First Year Price	\$14,298,939	\$14,103,672	
Initial Term (4 Years)	\$56,340,127	\$56,371,937	

Note: Numbers are rounded to the nearest dollar.

The Team referred back to the post-oral scores. These scores showed that five of the seven Committee members scored AlliedBarton higher than G4S for the technical criteria. Additionally, four of the seven Committee members scored Allied Barton higher than G4S for price. Since AlliedBarton was ranked the highest by the Committee, in both technical and price, and their BAFO was lower over the initial term of the contract, the team unanimously voted that AlliedBarton should be recommended for award.


Alina T. Hudak
Deputy Mayor

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